

Zilla Court
Decissions
Case- No - 50 (1847)

1850


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ZILLAH BACKERGUNGE.

PRESENT: W. H. MONEY, ESQ., JUDGE

THE 3RD MAY 1850.

No. 50 of 1847.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 26th May 1847.

Gunga Munnee, wife of Rampershad Ghoo, deceased, mother of Hurmohun Ghoo, and Gobind Chunder Ghoo, and Um Churn Ghoo, and Gopee Chunder Ghoo, son of Gungapershad Ghoo, deceased, and Ramcomul Ghoo, son of Puddopershad Ghoo, deceased, (Plaintiffs,) Appellants,

versus

Mr. F. Hawkins, surbarakar, and Nund Coomar Doss, naib, (Defendants,) Respondents.

THE plaintiffs instituted this suit to obtain a receipt, with compensation; laying their damages at rupees 463, 3 annas, 2 pie, 8 krants. They represented that in the 8 annas, 12 gundahs, 2 cowrees, 2 krants share of pergunnah Chunderdeep, in the neej talook of the zemindars in Adaburreea and other kismuts, they had a howla, recorded at a jumina of Company's rupees 1654, 6 annas, 4 pie, 16 krants, of which the 12 annas share and 4 annas share were distinct: that the sum of rupees 1500 had been paid for the year 1251, on different dates, into the serishta of the defendants, dakhilas being given for the amount, but for the sum of rupees 154, 6 annas, 4 pie, 16 krants, which was paid to the naib defendant through Jye Chunder Ghoo in the presence of respectable persons, they could not obtain any receipt, notwithstanding their repeated demands and the assurances of the naib, who had, moreover, caused a summary suit to be instituted against them without issuing the usual dustuk and notice.

Mr. Hawkins, surbarakar, replied that he had sued the plaintiffs for a balance of rent, which was the cause of their having preferred

this action; that the plaintiffs had not stated the nature of their connection with Jye Chunder Ghoo, nor the names of the respectable persons before whom the money was paid; and it could be proved that, before and after the institution of the summary suit, the plaintiffs had promised through one Bhyrub Chunder Ghoo to pay the balance by instalments.

Nund Coomar denied the allegation of the plaintiffs, or his knowledge of Jye Chunder Ghoo, nor had the plaintiffs stated any particulars as to the time and place where the money was paid.

The plaintiffs, in their replication, declared the payment took place in Nund Coomar Doss's lodging, on the 28th Jyte 1252: but this was met again by Nund Coomar Doss, in his rejoinder, to the effect that he was not at Burrisaul on the day mentioned by the plaintiff.

The principal sudder ameen, with reference to a prior suit under Regulation VII. 1799, brought against the plaintiffs by the surbarakars on the 12th June 1845, for a balance of rent due from the 12 annas share of their howla, considered this suit was brought merely to damage the surbarakar's claims, and, alluding to the discrepancy in the evidence of the witnesses adduced by the plaintiffs, and the fact of Nund Coomar Doss being absent at another place on the day the plaintiff asserted the payment of the money, and his not returning to Burrisaul till the following day, he dismissed the claim, with costs.

The appellants repeated their previous statements, and observed that, on the very day Nund Coomar declared his absence from Burrisaul, namely, the 28th Jyte 1252, he had given a dakhila to one Arman Ali Khan, which was in the collector's office, and that Nund Coomar had repeatedly received money through Jye Chunder Ghoo, of whose identity he pleaded ignorance.

Although the dakhila alluded to is dated the 28th Jyte 1252, it does not follow that it was given on that very day by Nund Coomar Doss, nor is it usual to give dakhilas invariably on the date they are written. Considering that the appellants, according to their own statement, paid the sum of rupees 1500, on account of their howla, into the serishta of the surbarakar, it seems extraordinary that they should not pay the remaining sum in a similar way; and referring to the previous suit of the surbarakar for the balance due from the 12 annas share of the howla, I concur with the principal sudder ameen in thinking that this action was merely brought for the purpose of invalidating the surbarakar's claim. The principal sudder ameen's order is confirmed, and the appeal dismissed, with costs.

THE 3RD MAY 1850.

No. 57 of 1847.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 30th June 1847.

Gour Mohun Doss, (Plaintiff,) Appellant,

versus

Bhugwan Chunder Doss, Nund Coomar Doss, Ram Kanye Rae Chowdree, Raj Bullub Rae Chowdree, Urnopoorna Chowdrine, wife of Gour Kishore Rae Chowdree, deceased, Parbuttee Chowdrain, wife of Sham Ram Rae Chowdree, deceased, Gopal Kishen Rae, and Manik Malla Chowdrine, wife of Gobind Chunder Rae, deceased, (Defendants,) Respondents.

THIS suit was instituted by the plaintiff to cancel and rescue his property from sale; laying his damages at rupees 400. It appeared from his representation that in the 8 annas, 12 gundahs, 2 cowrees, 2 krants share of pergunnah Chunderdeep, in kismut Cacheepara, and other kismuts, there was a talook purchased by Jyechunder Chuckerbuttee, formerly called Raja Ram Ghose, and afterwards Nund Coomar Doss, of which an 8 anna share belonged to Bed Soondur Ghose; that this said property was put up for sale in execution of a decree for rent under Regulation VII. 1799, and purchased by the plaintiff in the name of his son, Bhugwan Chunder, on the 22nd Aughun 1250; that unknown to him (plaintiff,) the defendants had caused his son, who was quite a youth, to pledge this property as security for the surbarakar, upon whose removal it was lotted for sale to recover a deficiency discovered in his accounts; that the property did not belong to Bhugwan Chunder but to himself, and had been merely purchased in the name of his son, who had no power to pledge or alienate the said property without his knowledge or permission.

Parbuttee Chowdrine, Ram Kanye Rae Chowdree, and Urnopoorna Chowdrine replied to the effect that Bhugwan Chunder had purchased the property in his own name and was in possession; that, after it had been pledged as security for Mr. Hawkins, the surbarakar, enquiries were twice made in the mofussil, and no objections urged by the plaintiff; but when the property was lotted for sale to realize the deficiencies of the surbarakar, then Bhugwan Chunder instituted this suit through his father; the collector, moreover, should have been made a defendant in the case.

The plaintiff, in his replication, repeated his former argument, declared his chelan, kubooleut and receipts would prove him to be the proprietor, and that the collector was not empowered to sell summarily any property to realize a surbarakar's embezzlement without having gained a decree against him.

The principal sudder ameen remarked upon a discrepancy between the plaint, and the tahood filed by the plaintiff, and being of opinion that Bhugwan Chunder was himself in possession of the property purchased in his name, and that the suit had been got up with the collusion of the father and the son, for the purpose of escaping from the payment of the deficiencies of the surbarakar, he dismissed the claim.

The discrepancy, mentioned by the principal sudder ameen, was denied by the appellant, who observed that Ram Kanye Rae Chowdree, Gopal Kishen Rae, and Manik Malla Chowdrine had acknowledged his proprietary right in the property in question, and filed a petition to that purport.

As three of the zemindars, defendants, acknowledged the appellant's claim before the principal sudder ameen, and two of them, Parbuttee Chowdrine and Urnopoorna Chowdrine, have made the same admission in this court, and the appellant has relinquished all claim to costs, a decree must be given upon that understanding: the appeal is decreed, the principal sudder ameen's order reversed, the security cancelled, and the property in question released from the responsibility of sale, and each party will pay their own costs.

THE 7TH MAY 1850.

No. 39 of 1847.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 20th April 1847.

Ukrumoonnissa Beebee, wife of Imtazooddeen Chowdree, deceased, mother and guardian of Momtazooddeen and Rumeezooddeen Chowdree, minors, and Gungagutty Doss, executor of Tectoo Beebee, minor, daughter of Aftabooddeen Chowdree, deceased, (Plaintiffs,) Appellants,

versus

Dhun Beebee, wife of Nowaz Ali Khunkar, deceased, and Kunchoo Beebee, and Toota Beebee, and Bellooa Beebee, and Hyatoonnissa Khatoon, wife of Burkuttoollah Khan, and Goorooopersaud Koond, Kurreemooddeen Chowdree, Usmutoonnissa, wife of Momtazooddeen Chowdree, Hurree Narain Ghose, Nub Doorgah, mother of Radhanath Ghose, minor, Brijnath Ghose, Bhyrubbee, wife of Doorgah Doss, deceased, Doya Moyee, wife of Kaleekishore Ghose, deceased, mother of Chunderkaunth Ghose, minor, and Gopall Lall Tagore and Ibadoonnissa and Fukuroonnissa, daughters of Moulvee Abdool Ali, (Defendants,) Respondents.

THIS suit was instituted in the first instance by Jeebunnissa, for possession, with mesne profits, of a 10 gundahs share of an estate,

and a 2 annas, 13 gundahs, 1 cowree, 1 krant share of a *khanabaree*; laying her damages at Company's rupees 1,055-0-3. It appeared that Ameeroonnissa, daughter of Jeebunnissa, and wife of Mahomed Fyz Buksh, was possessed of property, by virtue of her marriage settlement, situated in this district and in Dacca, consisting of *kharija* and *sheekmee talooks* and *howlas*; that, on her death in 1233, and her husband's demise shortly afterwards, her property, being divided into sixteen portions, became distributable as follows, namely, a 2 annas, 13 gundahs, 1 cowree, 1 krant share to Jeebunnissa, a 1 anna 6 gundahs, 2 cowrees, 2 krants share to her son, Aftabooddeen Chowdree, and 8 annas share to the defendant, Dhun Beebee, and a 4 annas share, to which Mahomed Fyz Buksh would have succeeded, to Dhun Beebee, and his other heirs: the plaintiff represented that at the earnest solicitation of Dhun Beebee, who was her granddaughter, she gave up a 10 gundahs share of the estate, and her entire share of the *khanabaree*, upon the condition that, if a son should be born to Dhun Beebee, by her husband Newaz Ali Khunkar, the son was to inherit and possess that share, and on failure of a son, Dhun Beebee and her heirs were to have no right whatever to it; but the plaintiff and her heirs after her decease were to possess and enjoy the same: that two agreements to the purport mentioned were drawn up, dated the 18th Jyte 1235, one of which was given by Dhun Beebee to the plaintiff, signed with her mark, and another given by the plaintiff with her signature attached to Dhun Beebee, in the presence of witnesses: that, as no son was born and Dhun Beebee's husband, Newaz Ali Khunkar, died in the year 1245, the plaintiff, according to the tenor of the agreement, demanded back the shares alluded to, but the defendants' refusal to deliver them up had compelled her to bring this action.

Dhun Beebee denied the execution of the agreement, and observed that, after the death of her mother, Ameeroonnissa, in consequence of disputes between herself and the plaintiff and her son, Aftabooddeen Chowdree, in connection with her mother's property, and also between herself and the heirs of her father, Mahomed Fyz Buksh, regarding his share of the property, two *solanamahs* were executed on that point on the 18th Jyte 1235, between herself and the heirs of Mahomed Fyz Buksh, and in like manner, on the 4th Jyte of that year, the plaintiff and her son, Aftabooddeen Chowdree, gave up to her by means of a *solanamah* a 10 gundahs share out of their 4 annas share of her mother's estate, and their entire share of the *khanabaree*; she observed also, that a dispute subsequently arose about the boundary of her dwelling house, and on that occasion the previous execution of the *solanamah* was distinctly mentioned in the paper, which the plaintiff and her son, Aftabooddeen Chowdree, wrote, fixing the line of demarcation, or *semabundee*; that on the death of her husband, in the month of Poos 1244, the plaintiff and her son took her to their home, and she gave up to the care of

Aftabooddeen her important documents with a list, and also an inventory of her goods and chattels, retaining a copy herself with the signature of Aftabooddeen Chowdree attached, and he became the sole manager of her affairs and the collections in the mofussil: that in the year 1250, in consequence of her being displeased with Aftabooddeen, she came to her own residence, and was resolved to manage her affairs herself, but Aftabooddeen would not give up her documents and goods, and, with a view of retaining possession of her property, produced a farming lease, which, in the case afterwards pending under Act IV. 1840, was rejected, and possession awarded her of her 9 annas 15 gundahs share: that Aftabooddeen had then recourse to the preparation of a false agreement, and, through his mother, had instituted this unfounded suit: that if the agreement were true how could Aftabooddeen, as asserted by him, have taken a farming lease of her entire 9 annas 15 gundahs share, after the death of her husband? and how was it that no mention of this agreement was made in the case pending before the magistrate and the sessions court? Again, in the year 1250, when the plaintiff and her son gave an ousut talookdaree lease to Kurreemooddeen Chowdree of their 3 annas 10 gundahs share in talook Mahattudee, mouzah Sredyar, if they possessed any other share, why did they omit it, and why did they not allude to it in that very lease?

The plaintiff, in her replication, denied the execution of the solanamah, or the grant of the ousut talook lease to Kurreemooddeen Chowdree, who was the chief adviser of the defendant in this case.

Kurreemooddeen supported the statement of Dhun Beebee, regarding the solanamahs, alluded to, his having received a talookdaree lease from all the sharers of 8 kanees of land in mouzah Sredyar, talook Mahattudee, for a consideration of 200 rupees, at the rate of 4 annas per kanees at a fixed jumma of 2 rupees, and pointed out the irregularity of the suit in consequence of the proprietors of the land not having been included as defendants.

The plaintiff, in reply to this, denied any irregularity in her suit as regarded the defendants, and remarked that it was unusual to give a talookdaree lease within a talook: that the land, moreover, would be worth 4 or 5 rupees instead of 4 annas per kanees, and commented upon the contradiction in the matter of this lease—Dhun Beebee asserting that an ousut talook lease had been given by the plaintiff and her son for their entire 3 annas 10 gundahs share, and the defendant, Kurreemooddeen, mentioning that he had received a lease of 8 kanees of lands from all the sharers.

Dhun Beebee, in her rejoinder, observed that, if the agreement were true, it would have been on stamp paper of 8 rupees' value, and would have been purchased on her account, and by her people, and not by Aftabooddeen's dewan, Gungagutty Doss, for Imtazooddeen's use: that the paper was purchased in the year 1233, a year and a half before the agreement was executed, at which time her husband was

alive, and he and her neighbours would have been aware of this fact; and with respect to Jeebunnissa's signature, which had been filed in this case, she declared that her mark had always been used on every occasion, and that she was unable to read or write.

The principal sudder ameen suspected the agreement filed by the plaintiff from its appearing to have been written on old paper with fresh ink, and from the fact of the stamp, which was of too low value, being purchased by Gungagutty for the use of Intazooddeen Chowdree, a stranger, about a year and a half before the execution of the agreement: nor did it appear to him from the terms of that paper that Jeebunnissa, the former plaintiff, had given any agreement to Dhun Beebee: he considered the copy of the farming lease as proving the execution of the solanamah mentioned by the defendant: and alluding to the talookdaree lease for 8 kanees of land given to Kurreemooddeen Chowdree, and the evidence adduced, and the improbability of the witnesses to the agreement, persons of inferior caste, being really aware of Dhun Beebee's execution thereof, and the fact of her possession for a period of 16 years, barring the suit from lapse of time, he dismissed it, with costs.

The appellants, after repeating their former objections, observed that the farming lease, alluded to by the principal sudder ameen, merely included the solanamah as connected with Mohamed Fyz Buksh's own estate, and had no concern with the property claimed by Jeebunnissa, and remarked that the liberty to sue would commence from the death of Newaz Ali Khunkar in 1245, and therefore there was nothing erroneous in their suit on that score.

The respondents pointed out the incorrectness of the appeal in consequence of the appellants having included one of the respondents, who died before the appeal was preferred, and quoted the case of Punganund Rae, petitioner, decided by the Sudder Court on the 24th March 1846, as a case in point.

The case quoted by the respondent is not applicable, having no reference to appeals, but to deceased persons being included in a plaint. With reference to the suit being barred by lapse of time, as stated by the principal sudder ameen, I am of opinion that, if the agreement is valid, the time of limitation would commence from the death of Newaz Ali Khunkar, the husband of Dhun Beebee, respondent, as by the terms of the agreement the plaintiff could not have preferred any claim before his death. I do not perceive any reason for suspecting the agreement, nor can it be rejected for the reasons urged by the principal sudder ameen, particularly as the solanamah, upon which the respondent Dhun Beebee grounds her defence, is not forthcoming; nor is it mentioned in the farming lease, adverted to by the principal sudder ameen, in support of Dhun Beebee's statement, for the solanamah there recorded has special reference to a howla connected with Mohamed Fyz Buksh's property, and not to the share claimed by Jeebunnissa. Considering also the contradictory statements

of Dhun Beebee and Kurreemooddeen regarding the nature of the lease said to have been given to Kurreemooddeen, and the persons who gave it, it is more than probable that the statement was got up through the collusion of Kurreemooddeen for his own advantage. It must be borne in mind that the share of the property, which devolved upon Jeebunnissa after Ameeroonnissa's death, was her own by right, and there was no occasion to resort to a solanamah: and if, indeed, the solanamah was executed, as stated by Dhun Beebee, in consequence of disputes, it seems unaccountable that she should have relinquished such an important document, and have given it in charge of a person who, though her relation, was the very person with whom there might be probability of dispute about the property. Upon these grounds therefore I must uphold the agreement. The appeal is decreed, the principal sudder ameen's order reversed, and the appellants will obtain possession of the share of the estate, and the khanabaree claimed by Jeebunnissa, with mesne profits from the month of Poos 1245, and interest from the date of the amount being ascertained; and Dhun Beebee and Kurreemooddeen will pay the costs of this suit, the other defendants being released from all liability.

THE 8TH MAY 1850.

No. 46 of 1847.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 6th May 1847.

Emdad Khan, Emran Khan, and Elmooss Khan, and Oolfutoonnissa, wife of Ismael Khan, mother of Ikbal Khan, (Defendants,) Appellants,

versus

Eshan Chunder Rae, Omesh Chunder Rae, and Kashee Chunder Rae, and Tarnee Chunder Rae, for himself and as guardian of Neel Komul Rae and Kalce Prushono Rae, minor brothers, (Plaintiffs,) Respondents.

THE plaintiffs instituted this suit for possession of 400 beegahs of land, with mesne profits; laying their damages at 1500 rupees. They represented that in pergunnah Owrungpore, joar Jyakottee, kismut Chaltabunnee, their ancestor, Nurnarain Rae, established a talook called Roop Chunder Juggernaut, comprised within the following boundaries: namely, on the east it was bounded by the western part of Khal Baranee Sunkurpore, which flowing from Khal Cheraburnee to the south, and uniting with the Joob Kally water was called by some persons at the south part Jeemboonee, and in consequence of the obstructions of the defendants had become dry in some parts; in the south, it was bounded by the north side of the

Gerakalee water; on the west by the eastern point of Khal Chaltabunnea; and on the north by the south side of Khal Chaltabunnea: that, on a former occasion, Basharut Khan, the ancestor of the defendants, with the view of getting possession of some of the land within the boundaries of their talook, brought an action against Goureenath Rae, and the husband of Soomitra, through his gomashita, Ram Ruttun Doss, for possession of 245 beegahs of land, claiming it as the howla of Ram Ruttun connected with talook Ram Chunder Doss ousut talook Redye Kishur Rae, neem ousut talook Booran Khan, and obtained an *ex parte* decree from the pundit sudder ameen, which was upset in appeal and possession given to the plaintiffs: that notwithstanding this decision the defendants dispossessed them of 400 beegahs of land, in the month of Maugh 1238, to the east of their talook, which circumstance was mentioned to the ameen at the time the lands of Chaltabunnea and Pykeea were measured under Regulation II. 1819.

An *ex parte* decree having been given in favor of the plaintiffs, Kaleepershad Rae, who was not one of the original defendants, appealed to the Sudder Court, who directed that, after proof being taken of his possession of the land in dispute, he should be admitted as a defendant, and the case tried upon its merits. Kaleepershad Rae then gave a petition, on the 22nd January 1841, declaring his possession through his shikmee ryots, the present appellants, on the 20th July 1841. A former principal sudder ameen, with reference to the map of Ram Kishen Misser, ameen, and the evidence adduced, considered that the plaintiffs were already in possession of the land they claimed, that is, to the west of Jeelbunnea Khal, and that the land in dispute to the east of the khal had no connection with their property but with kismut Pykeea, the ousut talook of Kaleepershad Rae and neem ousut talook of Emram Khan and others, and therefore dismissed the claim.

On an appeal to the judge, the case was remanded for further enquiries as to the two khals, Jeelbunnea and Baronee Shunkurpore, and from his not being satisfied with the accuracy of Ram Kishen Misser's map.

Esmal Khan, Emram Khan, and others gave a reply before the principal sudder ameen to the effect that they were the neem ousut talookdars of kismut Pykeea, and when Brindabun Chunder Roy formerly sued for possession of the lands of that kismut, his claim was dismissed and their neem ousut talook upheld from the enquiries instituted by Ram Kishen Misser, ameen: that the land claimed by the plaintiff had been resumed by Government under Regulation II. 1819, and a settlement affected with Kaleepershad Rae, their ousut talookdar, and the claim to the land east of Sontar Khal was opposed to the eastern boundary, included in the pottah of the plaintiff: that the map of Ramnath Canoongoe, upon which the judge founded his decision of the 7th September 1847, and which

was opposed to the previous decision in the case of Bindrabun Chunder Rae, was prepared without their knowledge, and could not affect the right of Government: that the dispossession of the plaintiffs was said to have occurred in the year 1238, but no particulars had been given as to the time, nor were any kubooleuts forthcoming showing their possession before that year: that inconsistencies were apparent in the documents filed by the plaintiffs and their plaint as regarded the boundaries of the land in dispute: and they concluded by observing that with the exception of the khal Baronee Shunkurpore, which flowed from khal Shunkurpore, and joined the Jera Khalee water, there was no other khal of that name, merely a khal called Jeelbunneea, which flowed somewhat to the west from the Gorye Nuddee, and then was closed.

The principal sudder ameen, with reference to the decision of the judge, dated the 7th September 1847, and the map of Ramnath Canoongoe, was of opinion that khal Baronee Shunkurpore flowed from the east of kismut Shunkurpore and the west of kismut Cherabunneea, proceeding from khal Cherabunneea towards the south and meeting with the Jera Khalee water, and that to the west of that khal there was no other khal proceeding to the south from kismut Shunkurpore and khal Shunkurpore, or from khal Cherabunneea and uniting with the Jera Khalee water, and further that Ram Rutten Doss, one of the ryots of the defendants, in a former case had declared the northern boundary of his talook to be kismut Bullubpoor and khal Cherabunneea, and from the map and enquiries of Wujooddeen ameen, and the evidence adduced, he considered it proved that the land in dispute was connected with kismut Chaltabunneea, the talook of the plaintiffs; and that the dried-up spot, indicated by the defendants as khal Baronee Shunkurpore, was cultivated with paddy, and rejecting the enquiries of the other two ameens as being opposed to that of Ramnath Canoongoe, and the decision of the judge alluded to, one of the enquiries moreover being *ex parte*, he gave a decree for the plaintiff, with mesne profits.

The appellants repeated their former objections, and could not understand how the principal sudder ameen rejected the reports of two ameens, and credited that of Wujooddeen, ameen, for his enquiry and that of Ramnath Canoongoe were opposed to the substance of the plaint; the canoongoe describing the khal Baronee Shunkurpore, as flowing, and the respondents, in their plaint, declaring it to be here and there dry; in Wujooddeen's map the khal is noted as still flowing, but in the map of the other two ameens the khal is described as dry here and there, so that Wujooddeen's map may be said to be a mere copy of Ramnath Canoongoe's map.

The respondents observed that as the neem ousut talook of the appellants had been disposed of by sale in the year 1843, they had no interest left, and no power to urge this appeal.

Two days after these objections had been filed, one Puddoopershad Dutt gave a petition, stating his purchase of the neem ousut talook of the appellants, and wishing to be installed in their place. At this stage of the proceedings no order is necessary upon the petition of Puddoopershad Dutt; and, if the neem ousut talook, was sold in 1843, as stated, the appellants had no grounds for this appeal.

In this case the chief point to decide is the exact position of khal Baronee Shunkurpore, for both parties admit it to be the boundary between Chaltabunneea and Pykeea. As no objections appear to have been raised against Ramnath Canoongoe's map at the time it was executed in 1828, it must be considered a fair guide for decision: in that map khal Baronee Shunkurpore is marked as being to the east of kismut Shunkurpore, and to the west of Cherabunneea, and kismut Shunkurpore is the northern boundary of Chaltabunneea, and kismut Bullubpore and khal Cherabunneea the northern boundary of Pykeea; but in the map relied upon by the appellants there is a great difference, especially in the map of Ramkishen Misser ameen, from there khal Baronee Shunkurpore is brought considerably to the westward, thereby including land belonging to the talook of the respondents, Ramkishen Misser's map was executed moreover in connection with a dispute about land in kismut Pykeea.

The principal sudder ameen has described khal Baronee Shunkurpore as flowing southward from khal Cherabunneea; but on looking at Ramnath Canoongoe's map it would be more accurate to describe it as flowing southward from both khals Shunkurpore and Cherabunneea, the waters of which unite from the east and west. As I do not consider the accuracy of Ramnath Canoongoe's map to have been impugned by any evidence adduced by the appellants, the principal sudder ameen's order is confirmed, and the appeal dismissed, with costs.

THE 10TH MAY 1850.

No. 31 of 1849.

Appeal from the decision of Gobind Chunder Bidyaruttun, Moonsiff of Cowcolly, dated the 17th February 1849.

Ramjeeewan Oopuddeca, (Defendant,) Appellant,

versus

Soobul Singh, (Plaintiff,) Respondent.

THIS was an action brought by the plaintiff against the appellant and other defendants for filling up a ditch on the west side of his compound, and uniting it with the road which he wished to be restored to its former breadth. It appeared from his statement that this road, which was between the western side of his ditch and the

eastern side of a tank belonging to the premises of Ramjeewan defendant, was a public one and open to all persons from time immemorial: that in the early part of Bysack 1247, the principal defendants dug a ditch at a time when he was absent, and included some part of the road with the banks of the tank alluded to, and filled up the ditch on the west side, in some parts five and six hats in width, and united it with the road.

Ramjeewan filed a petition, containing much irrelevant matter, described the boundary of his residence, and declared that on a former occasion the plaintiff had filled up the ditch to the south and west side, and included it with his compound, and in consequence of his (defendant's) opposition the case came before the magistrate, who gave orders for the ditch to be cleared: that the plaintiff had not only again filled up the ditch, but had destroyed his trees, for which reason he was about to complain, but had been forestalled by the plaintiff in this action.

The moonsiff gave a decree for the plaintiff, with directions for the ditch to the west of the plaintiff's compound, which was filled up in the centre, to be opened to the same width as in the north and south side, and costs against the defendant.

The appellant repeated his allegation as to the plaintiff filling up the ditch to the south side, thereby increasing it at the south corner, and observed that the west side was still quite straight, which would not be the case if he (appellant) had filled up the ditch on that side: that in the map filed by the respondent, the west side was marked straight; but the ameen, through collusion with the respondent, had written down the very reverse.

The respondent referred to the silence of the other defendants in this case, to the complaint of one Ramjan Shuriff, on which occasion from the darogah of Tugra's report the ditch in question was shown to have been filled up by the appellant, and remarked that the appellant's complaint against him for filling up his ditch on the south side had been dismissed in the criminal court.

It is not very clear from the papers on what side the ditch in question was filled up, because if filled up to the south side the appellant could have no object in doing it, and on the other hand it could be of no advantage to the respondent to do so on the west side: there is a discrepancy also in the map of the respondent and that of the ameen as to the western side of the ditch, and the moonsiff has given no opinion upon the credibility of this map of the ameen, nor stated by whom in particular the ditch was proved to have been filled up. As the enquiry is, in my opinion, incomplete, the appeal is decreed, the moonsiff's order reversed, and the case returned for re-trial, and the moonsiff will satisfy himself through some other ameen or respectable officer of his court upon the points above mentioned, and record his opinion more fully upon the nature of the evidence adduced by either party, and ascertain the distance

between the eastern side of the appellant's tank, and the eastern side of the respondent's ditch. The amount of stamp paper, on which the appeal is engrossed, will be refunded to the appellant.

THE 13TH MAY 1850.

No. 49 of 1847.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 22nd May 1847.

Korona Moeë, wife of Goorkishore Ghose, deceased, mother and guardian of Brindrabun Chunder Ghose, and Nursing Ghose, minor, and Shama Soondree, wife of Noboo Chunder, deceased, and Ram Gunga Ghose, (Defendants,) Appellants,

versus

Chundun Tara, wife of Kumul Kishen Ghose, (Plaintiff,)
Respondent.

THE plaintiff instituted this suit as a pauper, for possession of two talooks, with mesne profits; laying her damages at rupees 1355, 1 auna, 1 pie, 10 krants. It appeared from her statement that there were two talooks belonging to her father-in-law, Neelkant Ghose, and after his death to her husband, namely, one in the 5 annas 10 gundahs share of pergunnah Chunderdeep, in chukla Kasheepoor, and Hurano Phoolleea, kismut Kasheepoor, and other kismuts, and another in those kismuts connected with a kharija talook of that pergunnah purchased by Kumla Narain Rae and Tussera Khatoon, formerly called Khyralla Nooroolla, and both talooks called Neelkant Ghose: that, on the death of her husband, in the month of Poos 1241, who gave her permission to adopt a son, she went to her father's house, where the funeral obsequies of her husband were performed: that at this juncture the defendants, with whom she was connected, taking advantage of the existence of two ousut talook within her talook, in the name of Kumla Kant Ghose, son of Bhoobunnessur Ghose, dispossessed her of the property above mentioned and the residence created by her father-in-law: Bhoobunnessur Ghose, Ramgunga Ghose, and Korona Moeë having a 4 annas share, and Gokool Chunder Ghose, Nuboo Chunder Ghose, and Buddun Chunder Ghose a 12 annas share: that, after she had filed her petition to sue as a pauper, the defendants, colluding with the zemindars of the 5 anna, 13 gundahs, 1 cowree, 1 krant sub-divided share of her talook, kept back the revenue, got up a summary suit against themselves, and caused the sale of the talook in that zemindaree, when Gokool Chunder and others, on the 28th Bhadoon 1250, in the name of his gomashtha, Neelmonee Bose, and on the 7th Assin 1251, in the name of Hurchunder Doss, and Bhoobunnessur himself in his

own name, on the 4th Chyite 1252, purchased it, and were in possession.

Korona Moe, wife of Gour Kishore Ghose, mother and guardian of Brindabun Chunder Ghose and Nur Singh, minors, and Ramgunga Ghose and Nuboo Chunder Ghose denied the dispossession complained of, and remarked that the plaintiff's husband, the nephew of Rughooram Ghose, their ancestor, was protected by him, and received from him the two talooks mentioned by the plaintiff, and also a house prepared at Rughooram's expense: that having died in embarrassed circumstances, leaving the plaintiff a widow, and the talook being resumed by the zemindar for a balance of rent, and the plaintiff having no means of rescuing herself from her difficulties, on the 13th Assar 1242 relinquished the talooks and residence alluded to, namely, a 12 annas share to Nuboo Chunder Ghose and a 4 annas, with the shikmee property, to Ramgunga Ghose and Gour Kishore Ghose, husband of Korona Moe, for a consideration of 100 rupees, for the purpose of paying her own and her husband's debts, and signed with her mark in the presence of witnesses a deed of relinquishment upon the condition that they would give her annually 5 maunds of paddy and 5 rupees in cash by way of maintenance, and perform the obsequies of her father-in-law and mother-in-law and her husband according to custom, and in the event of the plaintiff's demise they and their heirs would also undertake the necessary duties connected with her obsequies, and if she was unwilling to reside in her father's house that they would take care of her: that Nubchunder having transferred his 12 annas share to his niece, Ramdoorga, she and Ramgunga Ghose and Korona Moe performed the conditions of the agreement and were in possession of their respective shares: that the zemindars of the 5 annas 10 gundahs share of pergunnah Chunderdeep having caused the sale of the sub-divided portions of the talook in their zemindarec, in execution of a decree for rent, Neelmonee Bose purchased the 5 annas, 13 gundahs, 1 cowree share, of which, after sub-dividing it, he disposed of a 12 annas share to Ram Doorga and a 4 annas share to Sreemuttee Jug Dumba, and Hur Chunder Doss was the purchaser of the 6 annas, 13 gundahs, 1 cowree, 1 krant share, and Ram Gunga Ghose's father, Bhoobynnessur Ghose, the purchaser of the 3 annas, 13 gundahs, 1 cowree, 1 krant share: that it was evident from the plaintiff's own statement that one of the talooks claimed by her had been sold in execution of a summary decree for rent, and yet she had not sued to reverse that decree or sale: that the plaintiff's assertion of her having received permission from her husband to adopt a son was extraordinary, as he had been imbecile for two years previous to his death.

The plaintiff, in her replication, observed that, with the power to adopt a son, it was quite improbable she should relinquish her hereditary property to another person; that she knew, moreover, how to

read and write, as would be apparent from the enquiries of the nazir in connection with a power of attorney filed by her when wishing to be admitted as a pauper, and that the enquiries of the ameen on that occasion showed the fraudulent possession of the defendants, who had not stated at what place or in what manner the deed of relinquishment was prepared: that as the defendants caused the sale of the talook, and were in possession after her petition to sue as a pauper had been admitted, there was nothing erroneous in the present action: that her husband had been and was at the time of his death in full possession of his senses, as could be abundantly proved.

Bhoobunnessur Ghose disclaimed all connection with the plaintiff's claim, and though she had stated him and his son Ramgunga Ghose, and his younger brother's wife to be in possession of the 4 annas share of the property claimed, yet the revenue had been always paid by the other sharers through him, recording their proprietary rights, and he alluded also to the claim for mesne profits being based upon a wrong calculation.

Korona Moeë, Nuboo Chunder and Ramgunga, in their rejoinder, amongst other matter, observed that the deed of relinquishment was registered by the mookhtear of the plaintiff's father, and the father's name was mentioned as a witness.

The principal sudder ameen considered; from the oral evidence adduced, that there was no proof of the deed of relinquishment having been executed; that the evidence was mostly hearsay, and contained a vast deal of discrepancy; and being of opinion that the claim of the plaintiff was fully established by the evidence she adduced, he gave a decree in her favor, with possession of the talooks claimed, and mesne profits and costs.

The appellants urged that the plaintiff should have sued to reverse the summary decree and sale: that the witnesses of the plaintiff, upon whom the principal sudder ameen placed so much reliance, were not residents of the place in dispute but lived far off; and amongst the witnesses named by the plaintiff, there was one Gopee Kishen Doss, witness for both parties, who was in attendance, and if his evidence had been taken the absurdity of the plaintiff's claim would have been established; they relied upon the correctness of the deed of relinquishment, and quoted Construction No. 942 in support of their statement; that the principal sudder ameen had mentioned in his decree the two talooks claimed by the plaintiff, as being in the 3 annas 10 gundahs share of the zemindaree, whereas one of the talooks was connected with a kharija talook, called formerly Khyroolla Noroolla.

Hur Chunder Doss, Ram Doorga, and Juggut Dumba, auction purchasers, filed a petition against the decision of the principal sudder ameen in support of the deed of relinquishment alluded to by the defendants.

The respondents reiterated their former arguments, denying the execution of the deed of relinquishment, or the applicability of Construction No. 942 to this case.

It does not appear from the papers why the principal sudder ameen omitted to take the evidence of Gopee Kishen Doss, from whom some satisfactory information might have been elicited; nor has he detailed sufficiently his reasons for upholding the plaintiff's claim, and rejecting the statement of the defendants, nor the nature of the discrepancy in the evidence of their witnesses adverted to. As the sale of the talook took place after the plaintiff was admitted as a pauper, it would, I think, be hard to nonsuit her for not having comprised in her plaint the reversal of the summary decree and sale. In consequence, moreover, of the insufficiency of the principal sudder ameen's enquiry, the appeal is decreed, the case returned, and the principal sudder ameen will take the evidence of Gopee Kishen Doss, named by both parties, and record more fully his reasons for upholding and rejecting the claim of either party, and the nature of the discrepancy in the evidence which may exist, and will also allow the plaintiff an opportunity of filing a supplementary plaint upon the point adverted to. The amount of stamp paper, on which the appeal is engrossed, will be refunded to the appellant.

ZILLAH BEERBHOOM.

PRESENT : F. CARDEW, ESQ., JUDGE.

THE 7TH MAY 1850.

Case No. 53 of 1850.

*Regular Appeal from a decision passed by the Moonsiff of Kytha,
Wujecooddeen Mahomed, January 15th, 1850.*

Dhununjy Oorinda, (Defendant,) Appellant,

versus

Dwarkanath Mundul Kurmocar, Kishto Mundul Kurmocar, and
Lukhee Narayun Mundul Kurmocar, (Plaintiffs,) Respondents.

THIS suit was instituted on the 14th August 1849, to recover the sum of Company's rupees 64, principal and interest, on an instalment bond alleged to have been executed in the plaintiffs' favor by the defendants, Dhununjy Oorinda and Kishtujy Oorinda and Ram-tunoo Oorinda, deceased, father of the defendant Hurceram Oorinda, under date the 22nd Srabun 1246 B. S., in satisfaction of a decree of court, amounting to rupees 30.

The plaintiffs stated that no part of the debt had been paid.

The defendant, Dhununjy Oorinda, in answer, acknowledged the bond and pleaded payment by instalments to the amount of 33 rupees, which, he alleged, was entered in the plaintiff's account book.

The other defendants did not put in an appearance.

The moonsiff decreed the suit in favor of the plaintiffs, rejecting the defendant's plea, on the grounds that it was at variance with a condition of the bond, which expressly stipulated that all payments, to render them valid, should be entered on the back of the deed; that the parol evidence adduced in support of the plea was grossly contradictory, in several particulars recorded by the moonsiff in full, and that the plaintiffs had produced their account books, which exhibited no items to the defendant's credit.

The defendant, Dhununjy Oorinda, states in the reasons of appeal that the condition of the bond regarding the endorsement of payments was entered according to custom, but was never conformed to; that he was unable to read and write and did not know what were the conditions of the deed; that the discrepancies in the evidence noticed by the moonsiff arose from want of memory on the

witnesses, and that the plaintiffs had produced not the right account books. These reasons are, in my opinion, wholly insufficient to impugn the correctness of the moonsiff's decision, which is supported by the record, and I therefore reject the appeal, and confirm the decision, under the provisions of Clause 3, Section 10, Regulation V. 1831.

THE 8TH MAY 1850.

Case No. 54 of 1850.

*Regular Appeal from a decision passed by the Moonsiff of Kytha,
Wujeeooddeen Mahomed, January 16th, 1850.*

Sheikh Mahomed Lal, (Plaintiff,) Appellant,

versus

Mahomed Mulee, (Defendant,) Respondent.

THIS suit was instituted on the 24th July 1849, to recover possession of 4 gundahs of land, and the right of use of the ghaut of a tank, situated in the village of Roodrunugur.

The substance of the complaint is that the plaintiff had a dung-pit, 16 cubits long and 8 cubits broad, on the north side of a road running east and west, which dung-pit the defendant had encroached upon by throwing therein the earth taken from a tank, on the other side of the road; that he complained of this encroachment before the magistrate, who, after instituting a local enquiry, passed an order in favor of the defendant, under date the 17th March 1849, in consequence of which the defendant filled up the dung-pit to the extent of one-half, and turning the road thereon, added the original site of the road to the embankments of the tank, and at the same time defendant forbid him the use of the ghaut of the tank to which he had a right.

The defendant, in answer, stated that, instead of his encroaching upon the plaintiff's dung-pit, the plaintiff had encroached upon the road by gradually cutting away the earth, and thus enlarging the pit; and that the road was altered by the police under the magistrate's order, and is now in its original site. He denied that he had deprived the plaintiff of the use of the ghaut.

At the request of the parties the moonsiff deputed the serishtadar, or head ministerial officer, of his court, to make a local enquiry, the result of which proved, by the evidence of witnesses examined on both sides, that the defendant's statement of the case was the correct one, and he therefore dismissed the suit with costs.

The plaintiff, in the reasons of appeal, objects to the serishtadar's enquiring, because he did not measure the breadth of the road, but I do not see how the omission to do so can affect the merits of the case. The answer of the defendant is supported by the evidence of

the plaintiff's own witnesses, and consequently no other decision could have been passed by the moonsiff. I reject the appeal, and confirm the decision under the provisions of Clause 3, Section 16, Regulation V. 1831.

THE 14TH MAY 1850.

Case No. 56 of 1850.

*Regular Appeal from a decision passed by the Moonsiff of Ookhra,
Gobind Chund Chowdhree, January 12th, 1850.*

Gunesh Mundul, (Defendant,) Appellant,

versus

Soobhudra Dasya, mother and guardian of Pran Mundul and Tarachurn Mundul, minor sons of Bindrabun Mundul, deceased, (Plaintiffs,) Respondents.

THIS suit was instituted, on the 22nd May 1849, to recover the sum of Company's rupees 28-9, principal and interest, on a bond executed by the defendant Gunesh Mundul in favor of Bindrabun Mundul, deceased, under date the 15th Assar 1253, in acknowledgment of a debt of 21 rupees.

The defendant, in answer, admitted having executed the bond, but stated that he had only received the sum of 13 rupees in consideration thereof, namely, 12 rupees on account of a former debt, and one rupee in cash, and that the writer of the bond, Nobin Sadhoo, and the subscribing witnesses, Muthoor Mundul and Gyaram Mundul, would prove that fact; that he had moreover repaid to the deceased Bindrabun Mundul the sum of 11 rupees 8 annas, in grain.

The plaintiff, in reply, denied the truth of the facts in the answer.

The moonsiff found it proved by the evidence of three subscribing witnesses to the bond, including the two witnesses named in the answer, that the defendant at the time of execution acknowledged having received the amount of the bond in full; and deeming the evidence of the two witnesses, Sarthuk Mundul and Manik Das, who were produced in support of the plea of payment, unworthy of confidence, he gave a decree to the plaintiff in full of her claim.

The defendant is dissatisfied with that part of the decision rejecting the plea of payment, which, he contends, is fully proved by the evidence adduced by him; but I can find no grounds for interference with the decision. The plea is unsupported by a written voucher; the witnesses are other than the witnesses to the bond, and their evidence *per se* is far from satisfactory in my opinion. I therefore reject the appeal, and confirm the decision under Clause 3, Section 16, Regulation V. 1831.

THE 14TH MAY 1850.

Case No. 59 of 1850.

*Regular Appeal from a decision passed by the Moonsiff of Sarhut,
Sumeenooddeen Ahmud, January 21st, 1850.*

Gosain Chynpooree, (Plaintiff,) Appellant,

versus

Gujadhur Jha and Ramoo Jha, (Defendants,) Respondents.

THIS suit was instituted on the 14th July 1849, to recover the sum of Company's rupees 49-5-6, on a bond, bearing date the 12th Srabun 1253 B. S.

The original amount of the bond was rupees 100, and the plaintiff stated that he had received in part payment the sum of rupees 71, namely, rupees 62 on the 5th Poos 1253, and rupees 9 on the 2nd Srabun 1255, for which he granted receipts.

The defendants, in answer, acknowledged the bond, and the correctness of the last mentioned payment; but pleaded that the sum paid by them on the 5th Poos 1253, amounted to rupees 98.

The point at issue, therefore, is, what was the amount of the payment made on the 5th Poos, rupees 62, or rupees 98? This is susceptible of proof on both sides, for both parties admit that the payment was made in one sum; but the moonsiff called for proofs from the defendants only, and on the parol evidence adduced by them gave judgment in their favor. I therefore reverse the decision as incomplete, and send back the case to the moonsiff, with directions to draw up a proceeding under Act XV. 1850, and re-try the case after calling for and examining evidence on both sides.

THE 14TH MAY 1850.

Case No. 57 of 1850.

*Regular Appeal from a decision passed by the Moonsiff of Gopalpore,
• Gopeenath Das, January 10th, 1850.*

Dhurmodas Chutrudhur, (Defendant,) Appellant,

versus

Sreenibas Laha, (Plaintiff,) Respondent.

THIS suit was instituted on the 17th July 1849, to recover the sum of Company's rupees 19-9-7, principal and interest, on an instalment bond, executed by the defendant in the plaintiff's favor, under date the 24th Assin 1238 B. S.

The claim is on account of the last instalment of the bond, which fell due in 1244, and was contested by the defendant on the

plea that he had paid the amount in full. But he failed to adduce evidence in support of the plea, though evidence was duly called for from him on the 9th December 1849, and the moonsiff in consequence gave a decree to the plaintiff.

The defendant objects to this decision, on the erroneous ground that the plaintiff himself ought to prove that there was a balance due on the instalment bond; and he adds that he received no notice of the order passed on the 19th December until the date of decision. But the order, I find, was passed in the presence of his vakeel, the period of eight days being allowed to carry it into effect; and there being no question that the *onus probandi* rested with the defendant, I reject the appeal, and confirm the decision under the provisions of Clause 3, Section 10, Regulation V. 1831.

THE 15TH MAY 1850.

Case No. 63 of 1850.

*Regular Appeal from a decision passed by the Moonsiff of Gopalpore,
Gopeenath Das, January 25th, 1850.*

Mankoomarce Beebee, (Plaintiff,) Appellant,

versus

Nobin Dutt, (Defendant,) Respondent.

THIS suit was instituted on the 15th February 1849, to recover the sum of Company's rupees 61-10-5, principal and interest, on a bond alleged to have been executed by the defendant in favor of the plaintiff, under date the 2nd Srabun 1251 B. S.

The defendant, in answer, denied the bond, and pleaded that the suit had been got up in a spirit of revenge, at the instance of a third party, with whom he had had a quarrel.

The moonsiff dismissed the suit, on the main grounds that the evidence of the witnesses produced by the plaintiff was contradictory and unworthy of confidence, that the signature to the bond did not correspond with the defendant's handwriting, and that it was proved by two witnesses, examined in support of the answer, that it was the general belief amongst the neighbours of the parties that the claim was false.

I can find no grounds for interference with the moonsiff's decision: the discrepancies in the evidence noticed by him, have not been explained in the reasons of appeal. I therefore reject the appeal, and confirm the decision, under Clause 3, Section 16, Regulation V. 1831.

THE 17TH MAY 1850.

Case No. 107 of 1849.

*Regular Appeal from a decision passed by the late Moonsiff of Doobrajapore,
Moulvee Atta Alee, April 28th, 1849.*

Poornanund Kubiraj and Ramanund Kubiraj, (Defendants,) Appellants,

versus

Bishtoo Chund Chukurbuttee, Brij Mohun Chukurbuttee, and Pertab Chund Chukurbuttee, heirs of Sibnath Chukurbuttee, deceased, (Plaintiffs,) Respondents.

THIS suit was instituted by Bishtoo Chund Chukurbuttee and his uncle, Sibnath Chukurbuttee, deceased, on the 1st May 1848, to recover the sum of Company's rupees 295-1, principal and interest, on a bond, bearing date the 11th Srabun 1248 B. S., alleged to have been executed in their favor by the defendants (appellants,) in adjustment of a former debt, amounting to rupees 168-12.

The defendants, in answer, denied the claim, stating that they executed on the date in question, for the selfsame sum, rupees 168, 12 annas, two deeds, namely, the bond on which the present claim has been brought, and a deed of mortgage, whereby they pledged certain lands in payment of the interest; that the plaintiffs had brought a suit for the money, under No. 254, and obtained an *ex parte* decree on the deed of mortgage, which alone they filed; execution of the decree was taken out and the amount realized, and they had now fraudulently instituted this suit to recover the money over again.

The plaintiffs, in their reply, contended that the two deeds were each on a separate account.

The moonsiff gave a decree to the plaintiffs, on the grounds that it was proved by the evidence of the witnesses adduced by them, that the defendants executed in their favor on the same date three deeds, excluding the disputed bond, each on a separate account; and that if the deed of mortgage and the disputed bond related to the same sum, the one deed would have been mentioned in the other.

In my opinion there is no doubt whatever that the claim is a fraudulent one. It appears that the subscribing witnesses examined on the plaintiff's part in this case were also examined in the former suit, No. 254 of 1844, which I called for from the record office, and they then deposed simply that the defendants borrowed from the plaintiffs, in their presence, the sum of rupees 168-12, for which they executed a deed of mortgage, and that the money was paid in cash. In this suit they deposed that at the same time and place three deeds were executed, namely, the deed of mortgage, the bond on which the present claim has been brought, and another bond of a larger amount, all on account of a former debt. Their evidence, therefore, is quite

unworthy of confidence. The disputed bond and the deed of mortgage are of the same amount, namely, rupees 168-12, and the tenor of the two documents shows that they relate to one and the same transaction, though no mention of the one deed was made in the other. I therefore reverse the moonsiff's decision, and decree the appeal to appellants, with costs in both courts.

THE 20TH MAY 1850.

Case No. 154 of 1849.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulvee Nujumul Huq, May 23rd, 1849.

Bunwaree Singh, guardian of Oodit Narayun Deo, minor,
(Defendant,) Appellant,

versus

Devee Singh Saha and Kalce Singh Saha, (Plaintiffs,)
Respondents.

THIS suit was instituted by the plaintiffs *in formâ pauperis*, on the 28th August 1847, to recover possession of mouzah Dehooya, belonging to the ghautwalce, talook Rohinee, and to obtain a refund of rent paid. The suit was valued at rupees 2,722.

The plaintiffs stated that mouzah Dehooya was engaged by their grandfather, Bhola Singh, in the year 1222 B. S., from Baboo Bishun Narayun Deo, the ghautwal of talook Rohinee, under a *mookururee* pottah, at a jumma of 72 rupees; that on the 3rd Assar 1230, Baboo Bishun Narayun Deo's successor, Sham Narayun Deo, borrowed from their grandfather the sum of 601 rupees under a bond, and mortgaged to them the said jumma in payment of the interest of the loan; that they had undisputed possession on those terms up to the year 1250 B. S., when the suzawal of talook Rohinee, which had been brought under attachment, in execution of a decree of court ten or twelve years before, distrained their property for alleged arrears of rent, and the property of the person whom they had given as security was ultimately sold for rupees 88-6; that the suzawal subsequently distrained their property for arrears of rent on account of 1251 and 1252, and took from them the sum of 108 rupees, and in the month of Srabun 1253, the collector, at his recommendation, dispossessed them, on the grounds of their being defaulters, and settled the mouzah with a person named Chynpooree Gosain: and the principal sudder ameen, by whose orders the talook had been brought under attachment, having declined to interfere in the matter, they were constrained to institute this action, making the guardian of the present ghautwal of Rohinee, Oodit Narayun Deo, minor, the suzawal, and Chynpooree Gosain, defendants to the suit.

The defendant Bunwaree Singh, the guardian of the minor ghautwal, (appellant,) in answer, denied the mortgage bond under which the plaintiffs claimed the rent of the mouzah, in payment of interest, stating that it had been procured in collusion with the late ghautwal's manager, who had access to his master's seal, and that the suzawal had suffered the rent to fall into arrears from the time of his appointment in the year 1241, through connivance.

The defendant, Chynpooree Gosain, (who has not appealed,) filed an answer in support of his pretension to hold the mouzah under the collector's settlement.

The principal sudder ameen gave a decree in favor of the plaintiffs, on the main grounds that execution of the mortgage bond by the late ghautwal, Sham Narayun Deo, was satisfactorily proved by the evidence of Kishen Dutt Jha, one of the subscribing witnesses, and of two other witnesses, Munorut Mahato and Manik Sikhdar, who were present in the assembly, and whose testimony was confirmed by a report from the attaching suzawal, bearing date the 11th July 1845.

The guardian of the minor ghautwal, the appellant, acknowledges in this court that the plaintiffs were in possession of the mouzah under the pottah granted by the former ghautwal at a jumma of 72 rupees, but objects that the mortgage bond is not proved, and, if proved, that the amount of the loan has been realized from the usufruct of the property, and the plaintiffs should be called upon to deliver in their accounts, under Sections 10 and 11, Regulation XV. 1793. But that law is only applicable to cases instituted by mortgagers to recover possession of mortgage property; and there being no doubt, in my opinion, as to the validity of the bond, which the appellant has not attempted to disprove by counter evidence, I confirm the decision of the lower court, and dismiss the appeal, with costs.

THE 21ST MAY 1850.

Case No. 64 of 1850.

*Regular Appeal from a decision passed by the Moonsiff of Kytha,
Wujecooddeen Mahomed, January 26th, 1850.*

Gudadhur Mundul, (Plaintiff,) Appellant,

versus

Lukhikanth Mundul, Gooroo Dnyal Mundul, Sreedhur Banerjya, heir of Tara Churn Banerjya, deceased, Gunga Narayun Acharjya and others, (Defendants,) Respondents.

THIS suit was instituted on the 16th June 1849, to recover possession of 4 cottahs of *bast* land (the site of a homestead) and 4 trees growing thereon, valued at rupees 15-14.

The plaintiff stated that he formerly held in mouzah Rameshpore, the zemindaree of the defendants, Gunga Narayun Acharjya

and others, 1 beegah 8 cottahs of rice land, and 4 cottahs of *bast*, including 4 fruit trees, at a jumma of rupees 4-4; that he resigned the jumma in 1252, and at the commencement of the following year re-engaged the *bast* land and trees from the farmer of the mouzah, the defendant, Tara Churn Banerjya, in *benamee*, in name of the defendant, Gooroo Duyal Mundul, at a jumma of 8 annas; that he subsequently underlet the land to the defendant, Lukhikanth Mundul, reserving to himself the right to the trees, of which he held possession up to the month of Bysakh 1256, when Lukhinath Mundul ousted him, notwithstanding that the farmer, to whom the matter in dispute was referred, had given a *roha*, or note, declaratory of his right.

The defendant, Lukhikanth Mundul, in answer, denied the claim, stating that, on the plaintiff's resigning the jumma originally held by him, he himself engaged the disputed *bast* land and trees from the farmer of the mouzah, under a pottah, bearing date the 12th Assin 1253, and he paid rent to the farmer accordingly.

The other defendants did not appear.

The moonsiff dismissed the suit, on the grounds that the plaintiff was unable to produce a pottah for the land, or any agreement from the alleged under-tenant, and the evidence of his witnesses, in respect to the allegation that he had entered into fresh engagement with the farmer, was entirely hearsay; that, on the other hand, the pottah, dated the 12th Assin 1253, on which the defendant, Lukhikanth Mundul, founded his rights, was duly proved in evidence, and the signature attached to it was authenticated by one of the plaintiff's own witnesses.

The plaintiff asserts, in the reasons of appeal, that though he held no pottah, or kubooleut, a transfer of names was duly made in the zemindar's serishta, and that the evidence of his witnesses proves that he was in possession; but of the former fact no proof whatever has been adduced, and the evidence, as to possession, is far from satisfactory in my opinion. I therefore reject the appeal, and confirm the decision under Clause 3, Section 16, Regulation V. 1831.

THE 23RD MAY 1850.

Case No. 56 of 1849.

Regular Appeal from a decision passed by the late Moonsiff of Doobraj-pore, Moulvee Atta Alee, March 26th, 1849.

Sreenath Chowdhree, (Defendant,) Appellant,

versus

Manik Chund Manna, (Plaintiff,) Respondent.

THIS suit was instituted on the 23rd July 1847, to recover possession of 6 beegahs of rent-paying land, and the value of crops.

The plaintiff stated that his father, Bhyrub Manna, deceased, held in mouzah Pootka, belonging to lot Babooijor, 31 beegahs, 18 cot-tahs of land, at a jumma of 26 Sicca rupees, to which he succeeded as heir; that on the 23rd Kartick 1253 B. S., he was forcibly dispossessed of 6 beegahs of the said land by Sreenath Chowdhree, the farmer of mouzah Bagduhuree, who cut and carried off the crops; that he brought a complaint against him in the foudaree court, where he obtained no redress, the Mahomedan law officer, to whom the case had been made over, having referred him to an action under Act IV. 1840: he therefore instituted this suit, valuing the land at rupees 110, and the crops at rupees 34-5, and making Sreenath Chowdhree, the respective proprietor of the two mouzahs, and others, defendants.

The defendant, Sreenath Chowdhree, in answer, pleaded that the disputed land belonged to mouzah Bagduhuree, and as the suit involved a boundary dispute, it should have been instituted by the zemindar of Babooijor and not by a ryot; that the land was originally reclaimed from the jungle by Nuffur Chund Raee, who was succeeded in 1246 by the plaintiff's father, who executed a kubooleut in his (defendant's) favor, at a jumma of rupees 1-8, and the plaintiff succeeded to possession after his father's death; that at the commencement of 1253 he served on the plaintiff a notice, under Sections 9 and 10, Regulation V. 1812, calling upon him to pay an enhanced rent, which was not attended to, and as the lease, under which the land was held, had expired, and the plaintiff was a *pay-khast* ryot, he ousted him under the provisions of Section 10, Regulation LI. 1795, and made over the land to Kishto So and Becharam So, and they having fallen into arrears he attached their crops, with the assistance of a muzkooree peon deputed by the police darogah under Regulation XX. 1817, in consequence of which the plaintiff had now colluded with the zemindars of Babooijor, in order to regain possession of the land, on the pretence that it belonged to mouzah Pootka, his (plaintiff's) place of residence. He objected also to the value of the crops claimed as being excessive.

The plaintiff, in his reply, denied the facts in the answer, which he said were contrary to the statement made by the defendant in the foudaree court, in which there was no mention of his (plaintiff's) having cultivated the land as a ryot of Bagduhuree.

The other defendants did not appear.

On the 16th August 1848, the moonsiff struck the case off the file, on the ground that the plaintiff had presented a petition to the ameen deputed to make a local enquiry, relinquishing his claim. This petition was denied by the plaintiff, who appealed against the order; and on the 22nd November the case was remanded to the moonsiff with directions to investigate the matter, and in the end the objections of the plaintiff in regard to the petition were admitted.

The moonsiff consequently now tried the case on its merits. He was of opinion that it was satisfactorily proved by the evidence of the witnesses examined on the plaintiff's part; that the plaintiff was in possession of the land, and brought it into cultivation in the year 1253, and that the evidence of the defendant's witnesses on that point, to which he restricted the enquiry, was unworthy of confidence; and he therefore decreed to the plaintiff possession of the land, and damages in compensation for the loss of the crops to the amount of rupees 26-3-10, being the mean value of the crops as deposed to in evidence.

The defendant filed two petitions of appeal, namely, a summary appeal against the order passed by the moonsiff in respect to the alleged withdrawal of the claim, which was dismissed by this court on the 21st instant, and the present appeal. In the reasons of appeal he again quotes Section 10, Regulation LI. 1795, which applies only to Benares, and contends that the accounts filed by him and the evidence of his witnesses prove his case; and in respect to the damages he objects that the moonsiff should have been guided by the lowest value of the crops named by the witnesses, and not by the mean. But I can find no grounds for interference with the decision; the evidence greatly preponderates in favor of the plaintiff, who, there is no doubt, had possession of the land, paying rent to the zemindar of Babooijor; and the damages awarded appearing to me fair in amount, I confirm the decision, and dismiss the appeal, with costs.

THE 29TH MAY 1850.

Suit No. 224 of 1849.

*Regular Appeal from a decision passed by the late Moonsiff of Doobraj-
pore, Moulvee Atta Alee, November 13th, 1849.*

Sibram Mahata, (Plaintiff,) Appellant,

versus

Hurlal Naek, Shamlal Naek, Kanailal Naek, Kalee Purshad Naek,
Jugubundhoo Naek, Narayun Das, Brijlal Gorain, Doolubh Dome,
and eight others, (Defendants,) Respondents.

THIS suit was instituted by the plaintiff (appellant), on the 15th July 1848, to recover the value of a cart, three bullocks, five sacks, and three brass utensils, with damages, amounting, on the whole, to rupees 147-8-6.

The substance of the plaint is that, in the month of Chyete 1253 B. S., the plaintiff conveyed to Kuddia, on bullocks, some *tussur* cocoons, which had been purchased by one Mudhoosoodun Chatoorjya from the defendants, Hurlal Naek, Shamlal Naek, and Kanailal Naek, and the price not having been paid, the said defen-

dants on his return held him responsible for it, kept him in duress, and, through the instrumentality of the other defendants, took from him the property sued for, by way of security ; that he brought a complaint against them all before the magistrate, which was dismissed on default ; that afterwards the defendants, Hurlal Naek, Shamlal Naek, and Kanailal Naek instituted a suit, No. 292 of 1847, in the moonsiff's court against plaintiff, his father, Gya Gobind Mahata, and Mudhoosoodun Chatoorjya, to recover the price of the cocoons, rupees 28-12, which was decreed against Mudhoosoodun alone, plaintiff and his father being released from the claim ; and as the property had not been restored, plaintiff brought the present action.

The defendant, Hurlal Naek, in answer, denied the claim, which he declared to be fraudulent. He admitted that the plaintiff's father, Gya Gobind Mahata, had pledged to him three bullocks of the description given in the plaint on account of a debt ; but he knew nothing of the rest of the property.

The defendant Shamlal Naek filed an answer to the same effect.

The defendants, Kalce Purshad Naek, Jugubundhoo Naek, Narayun Das, Brijlal Gorain, and Doolubh Dome, filed three separate answers in denial of the claim. The other defendants did not appear.

The moonsiff dismissed the suit with costs, on the grounds that the evidence of the plaintiff's witnesses failed altogether to establish the claim, and that the answer of the defendant Hurlal Naek, in respect to the three bullocks, was proved by two witnesses examined on his part, namely, Mahalharuth Mahata Mundul, and Gooroo Churn Poddar.

In the reasons of appeal the plaintiff states that his claim in respect to the three bullocks is proved by Hurlal Naek's answer ; that the plea that they had been pledged on account of a debt is false, for the fact that the property had been taken from him by the defendants was recorded in his answer to the plaint in the suit, No. 292 of 1847, and the reply to that answer made no mention of the bullocks having been pledged. He also objected that the moonsiff had wrongly charged him with the full fees of the pleaders in each of the five answers filed by the defendants.

On referring to the suit alluded to above, I find that the plaintiffs (the present defendants, Hurlal Naek, Shamlal Naek, and Kanailal Naek,) declined giving any reply to the statement made in the answer, on the ground that it was irrelevant matter ; and as it appears that the complaint brought before the magistrate gave a very different version of the story from that recorded in the present plaint, and no sufficient reasons have been given to impugn the correctness of the evidence of the two witnesses examined for the defendants, one of whom was named by both parties ; I confirm the

decision of the lower court on the merits of the case; but the order in respect to the pleader's fees is erroneous.

In a decision passed by the Sudder Dewanny Adawlut, recorded at page 418 of the printed Decisions for 1849, it was held that "when separate answers for several defendants (sued jointly), and to the same effect, have been filed by one and the same pleader, the full fees of one pleader can only be given." Now in this case the answers of Hurlal Naek and Shamlal Naek are to the same effect, and were filed by the same pleader, Kartick Dhur; the answers of Kalee Purshad Naek, and Jugubundhoo Naek, and Narayun Das, and Brijlal Gorain, are also to the same effect, and were filed by the same pleader, Koochil Chund Hujara; that of Doolubh Dome was filed by the pleader, Rooknaooddeen. The plaintiff is therefore liable, under the precedent above quoted, for the full fees of three pleaders, instead of five, as ordered by the moonsiff. The order to be amended accordingly, and the costs of this court charged to the parties *pro ratu* to judgment.

THE 30TH MAY 1850.

Case No. 221 of 1849.

Regular Appeal from a decision passed by the late Moonsiff of Doobraj-pore, Moulvee Atta Alee, October 30th, 1849.

Ashootosh Dey, for self and as executor to the estate of Prumuthunath Dey, deceased, (Plaintiff,) Appellant,

versus

Meer Omur Alee and others, heirs of Meer Mazum, deceased, (Defendants,) Respondents.

THIS suit was instituted on the 1st June 1848, to recover the sum of Company's rupees 7-1-10, being arrears of rent, with interest, for 1251 B. S.

The plaint sets forth that the defendant, Meer Mazum, held in mouzah Aoliya, hoodah Jheeloor, plaintiff's zemindaree, 12 beegahs of land, at a jumma of 11 Sicca rupees, and 10 Sicca rupees under the denomination of *abieaub*; total Sicca rupees 21, or Company's rupees 22-6-10; that in the year 1251, the defendant paid the sum of rupees 17-9, leaving a balance of rupees 4-13-10, which it was sought to recover, with interest.

The defendant appeared by vakeel in the lower court, but having omitted to file an answer, the case was tried by the moonsiff *ex parte*, and decreed in favor of the plaintiff, under date the 17th September 1848.

On appeal preferred by the defendant, who denied the legality of the decision, the case was remanded by the principal sudder ameen, with the concurrence of this court, with directions to the moonsiff

to ascertain what was the nature of the *abwau* claimed, and whence it originated, and to decide whether the demand on account thereof was legal or not.

On being called upon to explain the matter, in conformity with the above order, the plaintiff filed a copy of a *jummabundee* account, dated 1194 B. S., and his zemindaree accounts from the year 1240, to show that the *abwau* had been paid from that period, and as those documents constituted no proof of its validity, the moonsiff now dismissed the suit with costs.

The plaintiff, in this court, maintains that the *abwau* claimed is not of the description prohibited by Section 55, Regulation VIII. 1793; that it was *asul jumma* only, that it has all along been entered in the accounts under the head of *abwau*; and his vakeel explains that it consists of the jumma of rent-free lands and tanks-resumed by the former zemindar of Beerbhoom. But I am not satisfied with this explanation, which is unsupported by the record. No proof of the legality of the claim has been adduced; the *jummabundee* account of 1194 B. S., which is dated before the promulgation of Regulation VIII. 1793, has no apparent connexion with the defendants' holding, it merely denotes that *abwau*s were formerly imposed on the ryots, which no one denies; but such *abwau*s were required by Section 54, of that Regulation to be consolidated with the *asul* into one specific sum; and the fact that the *abwau* now claimed has hitherto been paid by the ryot, even, if true, cannot warrant a decree in the face of an enactment prohibiting the imposition of such cesses, and in the absence of any engagement contracted between the parties as provided for by Section 3, Regulation V. 1812. I therefore confirm the decision of the lower court, and dismiss the appeal, with costs.

THE 30TH MAY 1850.

Case No. 222 of 1849.

Regular Appeal from a decision passed by the late Moonsiff of Doobraj-pore, Moulvee Atta Alee, October 30th, 1849.

Ashootosh Dey, for self and as executor to the estate of Prumuthunath Dey, deceased, (Plaintiff,) Appellant,

versus

Meer Tusudduk, (Defendant,) Respondent.

THIS suit was instituted on the 1st June 1848, to recover the sum of Company's rupees 5-14, being arrears of rent, with interest for 1251 B. S.

The circumstances of this case are similar to that recorded under the case No. 221 of 1849, decided this day, and the same order applies.

ZILLAH BEHAR.

PRESENT: FRANCIS LOWTH, Esq., ADDITIONAL JUDGE.

THE 25TH MAY 1850.

No. 45 of 1848.

*Appeal from a decision of Syed Tufuzzul Hosein, Sudder Ameen of
Behar, dated 23rd November 1848.*

Jugdeo Bhyah Gyawal, (Defendant,) Appellant,

versus

Damoodhur Lall Khuttree, (Plaintiff,) Respondent.

CLAIM, for rupees 337-0-3, due on a bond executed by appellant, under date the 5th Aughun 1252 F.

The appellant in this case appeals against the order of the sudder ameen of Gyah, dated 23rd November 1848, decreeing the above amount in favor of the plaintiff (respondent),—and urges various reasons against that decision, and, among them,

First.—That one *Gopal Koormee*, original purchaser of the stamp paper, on which the bond was written, and from whom the respondent appears to have obtained it, was not in the district, or at his home at the time the document itself was written, nor on the date of its purchase, viz., 26th November 1844, corresponding with 2nd Aughun 1252 F.

Second.—That the signature affixed to the bond is a fabrication, and does not accord with that attached to the vakalutnameh signed by the appellant and filed in the case.

Third.—That *Buhoree Bhyah Gyawal* was the instigator in the case, and being well acquainted with the matter should have been summoned to give evidence.

This case appears to have been instituted before the sudder ameen on the 15th May 1848. From the record of the case it appears that the money was not paid in the presence of any party, save one *Bhoop Lall*, the writer of the bond, and that that document was prepared in the absence of the subscribing witnesses, who also signed the same at different times, and not in the presence of each other; considering this not only unusual, but an irregular mode of conducting business, contrary to the customs of the natives of the country, and as the appellant (defendant) had urged the fabrication

of his signature, before the sudder ameen, further evidence and proof in support of the claim should have been required, and the authenticity of the (defendant) appellant's signature substantiated; also the evidence of *Gopal Koormee*, an essential witness in the case, should have been recorded, to ascertain the fact of the purchase by him of the stamp paper originally, and how it came into the possession of the plaintiff (respondent,) and whether the said *Gopal Koormee* was at his home, or in the district on the 2nd Aughun 1252 F. or not; and further, that *Buhoree Bhyah*, who appears to have been cognizant of the whole matter, should have been summoned to give evidence in this case.

Considering the further investigation into these points necessary and essential to the correct decision of the case, I direct that the same be returned to the sudder ameen for re-investigation and decision, and the stamp for the appeal to be refunded in the usual manner.

THE 31ST MAY 1850.

No. 39 of 1848.

Appeal from a decision of Syed Tufuzzul Hosein, Sudder Ameen of Behar, dated 6th September 1848.

Reejhun Singh, son and heir of Nehal Singh, deceased,
(Defendant,) Appellant,

versus

Dumree Singh and Ishuree Pershad Singh, (Plaintiffs,) Respondents.

THIS suit was instituted on the 13th May 1847, to recover the sum of rupees 388-4-3-4, principal and interest of a bond, executed by Nehal Singh, deceased, dated 27th Chyete 1242, or 10th April 1835.

The plaintiffs state that Nehal Singh took an advance of rupees 2000 from them, and gave a farm of his share in mouzahs Bunyadpoor Khanpoora, Khanpoora, Ibrahimpoore, Noama, Luchmunpoore, Jaipore, and Furreedpoore, on a jumma of rupees 33-5-6 from 1237 to 1251 F.; that he subsequently, on various dates, borrowed at interest rupees 275, and gave the bond abovementioned, in which it was stipulated that the sum should be repaid with the advance in 1251; that the interest of the bond used to be liquidated by credit of the rupees 33-5-6, but in consequence of the lease of the farm having expired in 1251, and Furreedpoore and other villages having been sold, no interest could be realized, nor any portion of the principal recovered: hence this suit.

The defendant admits the execution of the bond, but pleads that, on the estates of Nehal Singh being advertised for sale on account of a decree due to Conniah Sahoo, the plaintiffs objected to the sale on

the ground that the estates were pledged to them on account of an advance and bond debt; that the sudder ameen thereon forwarded a proceeding to the collector of Behar, desiring him to sell the estates, if the price bid was more than enough to cover the claims of the opponents, otherwise not to sell, and that, in case of a sale, the proceeds were first to be applied towards payment of the objector's claims, and the surplus, if any, to be paid to Conniah Sahoo; this order was upheld in appeal; the sale, however, did not take place; subsequently, on the 17th November 1838, the rights and interests of Nehal Singh and Bhubun Singh in Khanpoora were sold in satisfaction of a decree due to one Bydnarain Singh and purchased by Doorbejoy Singh for 105 rupees; that, on objections to the sale being urged again by the plaintiffs on the score of the low price realized, the sale was reversed and a resale directed; that on the collector's proceeding to carry this order into effect, the plaintiffs represented that they had claims to upwards of 8000 rupees against all the proprietors of Khanpoora, and that, if any party would bid more than what they claimed on account of the advance and bond debt, the sale might proceed, otherwise they would be the purchasers; the property was accordingly put up and sold to Dumree Singh, one of the plaintiffs, for rupees 100. After this, on the 19th May 1842, the additional principal sudder ameen recorded in the case of Bydnarain; that as he had received no portion of the proceeds from the said sale, which was held evidently in satisfaction of the claims of the plaintiffs, and as it does not appear what those claims amount to on account of their advance and bond, the plaintiffs must in one month bring a regular suit to establish that point. They neglected to do so, and therefore it is evident the purchase made by them was in lieu and satisfaction of their claims, and the present suit on account of the bond debt, which cannot be separated from the advance, is instituted only to obtain a double payment.

The sudder ameen decided that, as there was no condition in the bond to the effect that, in the event of the non-payment of the bond debt at the expiration of the lease, it was to be considered one with the advance and the farm continued till the liquidation of both amounts, whilst the only stipulation was that the bond debt should be paid with the advance in Jyte 1251, the year of the termination of the case, the claim must be considered just, and, if not demanded, might be lost to the plaintiffs by the expiration of 12 years.

Appellant has advanced no arguments beyond those set forth in his answer above noted, but cites the decisions in the suit of Shah Abdool Kurreem *versus* Kunhye Sahoo and Mohun Sahoo in special appeal before the Court of Sudder Dewanny Adawlut, dated 19th July 1847, (page 343 of No. XXIII. 1847,) and Sheolal Singh and Shecopurshun Singh *versus* Bolakee Singh in appeal before the officiating additional judge of Behar, dated 24th October 1849, as conclusive in this case.

Respondents declare the debts to be distinct; that no condition was inserted in the bond for the continuation of the farm in the event of the debt in question being unpaid in 1251; that of the seven three mouzahs given in farm, three have been sold, viz., two on account of balance of Government revenue, and one, Khanpoora, in satisfaction of a decree held by Bydnarain, which Dumree Singh purchased, but not in lieu of their claims, and therefore their present demand is a just one.

I consider the claim of respondents established, that the debts are distinct; that the lease of appellant's estate was given in farm only on account of the advance, that the condition in the bond related only to the repayment of the bond debt in 1251 F., without any stipulation as to the continuation of the farm in the event of its non-payment, and therefore that the decisions cited by appellant founded on documents containing specific conditions to that effect, are not applicable to the present suit; moreover, that appellant has not established the plea of respondents' having purchased the rights and interests of Nehal Singh in mouzah Khanpoora, in lieu and satisfaction of all claims against him. I therefore confirm the decree of the sudder ameen, and dismiss the appeal, with costs.

THE 31ST MAY 1850.

No. 147 of 1848.

Appeal from a decision of Sheikh Kasim Alli, former Additional Moonsiff of Gyah, dated 27th June 1848.

Musst. Bikanee, widow of Meer Ahmud Ali, deceased, (Defendant,) Appellant,

versus

Bulwunt Sahoo, Jhuboo Sahoo, Jetun Sahoo, Girdharee Sahoo, and Rujjoo Sahoo, sons and heirs of Pershad Sahoo, deceased, (Plaintiffs,) Respondents.

THIS suit was instituted on the 10th May 1847, or 1st Jyete 1254 F., to recover rupees 285-12, principal and interest on account of arrears of rent of a farm of mouzah Juffeepore, pergunnah Balawor, for 1242 and 1243 F., being a third share of the village after deducting the shares of other parties.

The plaint sets forth that the plaintiff (deceased,) Jankee Sahoo, and Jehul Sahoo held the mortgage of the village from Taikmun Misser and others; that defendant (deceased) took the lease from the plaintiffs, at a jumma varying year by year, from 1237 to 1245 F.; that he remained in possession of the farm up to the end of 1243, and paid his rents in full up to 1241; but for 1242 and 1243 he paid nothing, and in 1244 the village was attached, resumed, and settled with the original proprietors; that the other two partners with

plaintiff (deceased) in the mortgage, sued the farmer for their shares of rent due and obtained decrees.

The defendant (deceased) replied that he had paid all the rents up to 1243 F., that in 1242, an adjustment of accounts took place, when a balance of rupees 44-14-9 was shown against him, which, with the rent of 1243, he discharged and holds receipts for; that in fact he paid rupees 10-9-3, in excess; moreover, that the plaintiff, not having preferred his claim for more than 12 years, cannot now sue him.

The additional moonsiff decreed the suit in favor of the plaintiff (deceased,) on the grounds that the adjustment account and receipts filed by the defendant (deceased) are not genuine.

The appellant urges that the genuineness of the said documents has been fully proved by the evidence of witnesses, that the signatures of plaintiff (deceased) thereto attached accord with each other, and that, though he knew how to write, he did not sign his vakalut-nameh in the suit from fear of comparisons being made, but got his brother, Jankee Sahoo, to sign for him.

I see no reason for summoning the respondents.

The evidence of the witnesses adduced in support of the assertion that an adjustment of accounts had taken place, and to attest the receipts, is most unsatisfactory and untrustworthy; the documents cannot be considered genuine, as the signatures in no one instance correspond, nor did the defendant ever attempt to establish their correctness by comparison with other signatures of the plaintiff on receipts, which he must have had in his possession, as the plaintiff could not file a suit for the rents of 1242 F. till the following year, the period of limitation must be reckoned from 1243 F., this suit, therefore, instituted in 1254 F., is not liable to be dismissed on that ground. I therefore confirm the decree of the additional moonsiff, and dismiss the appeal, with costs.

THE 31ST MAY 1850. .

No. 176 of 1848.

Appeal from a decision of Syed Mohummud Alli Ashruff, Moonsiff of Behar, dated the 31st July 1848.

Reetoo Mahton, (Defendant,) Appellant,

versus

Seetaram Bhut, (Plaintiff,) Respondent.

THIS suit was instituted on the 1st February 1848, to recover rupees 16-14-7-7, principal and interest of a bond, dated 16th Chyete 1251 F., alleged to have been executed by the defendant in plaintiff's favor.

The defendant denies the claim *in toto*, and states that he was absent from his village and house on the date of the execution of the bond; that on a division of property being made in 1252 F. between him and his brothers, the plaintiff acted as one of the arbitrators; that all the debts of the several members of the family were entered in a list, and the present claim not being among them is an unjust one and the bond fabricated.

The moonsiff decreed the suit in favor of the plaintiff, on the grounds that the bond was proved both by the evidence of witnesses and the document itself; that of three witnesses produced by the defendant to prove his absence from home, one was a relation and his evidence therefore not trustworthy, a second deposed to his being at his house, and on the single statement of the third, though supporting the plea of the defendant, no reliance could be placed, and that the document filed to prove the division of property,—being on plain paper, the evidence of witnesses to it was useless.

Respondent denies all knowledge of the tukseemnameh.

The appellant has failed to substantiate his plea of absence from the village and his house on the date of the execution of the bond, whilst that document is proved by the evidence of witnesses to be genuine and to have been executed by the appellant: the evidence of the witnesses, produced in support of the tukseemnameh, is most unsatisfactory and insufficient to establish its genuineness, whilst the document itself is on plain paper: moreover, though the plaintiff was able to write his name, attached to the said document as arbitrators, is acknowledged not to have been signed by himself, but by one Wuzeer Ali, who wrote the document and signed for all the other witnesses thereto, who were ignorant and illiterate parties. I therefore confirm the decree of the moonsiff, and dismiss the appeal, with costs.

ZILLAH BHAUGULPORE.

PRESENT: W. S. ALEXANDER, Esq., JUDGE.

THE 3RD MAY 1850.

No. 7 of 1848.

Appeal from the decision of Moulvee Moazzum Hossein, Principal Sudder Ameen.

Chowdhry Dowlut Singh, (Plaintiff,) Appellant,

versus

Musumut Naine Koomaree and others, (Defendants,) Respondents.

INSTITUTED 7th January 1847, decided 23rd June 1848.

This action was instituted by the plaintiff, to recover from the defendants, as heirs of Musumut Juldye Konwaree, deceased, the sum of Company's rupees 2,941-6-9, being the value of the produce of certain lands. The claim was not disputed, and the plaintiff obtained a decree for the amount sought to be recovered, which he was to execute on the property of the deceased—the court releasing the defendants from responsibility.

Against this portion of the decision, the plaintiff has appealed, urging that the defendants are the heirs of the deceased, and three of them, viz., Toolshee Dut, Sebnerayun Singh, and Shew Sunker Singh, took possession of the personal effects, carrying off rupees 5000 and other property, thus depriving him of the means of executing his decree. A summons was issued for the attendance of respondents.

JUDGMENT.

The liability now sued for was incurred by a Hindoo widow, and on her decease her heirs cannot be made responsible for the debt. It must be recovered from her property. The principal sudder ameen, however, has, in my opinion, irregularly put to the issue the charge made by the appellant against the defendants, Toolshee Dutt and two others, of carrying away the personal property of the deceased. This charge appeared for the first time in the plaintiff's replication, and formed other matter than that contain-

ed in the plaint, contrary to the provisions of Section 5, Regulation IV. 1793. This portion therefore of the principal sudder ameen's decision must be regarded as mere surplusage. The principal sudder ameen having declared that these defendants were not the heirs of the deceased, need not have entered upon a matter, the enquiry into which belonged more legitimately to the criminal than to the civil court. Ordered, that the appeal be dismissed, and so much of the decree of the principal sudder ameen that allows the appellant to execute the judgment passed, on the property of the deceased, be confirmed.

THE 3RD MAY 1850.

No. 33 of 1847.

Appeal from the decision of Moulvee Moazzum Hossein, Principal Sudder Ameen.

Nund Kissore Doss and others, (Defendants,) Appellants,
versus

Chulaie Ram Chowdhry, and after his decease, Gordial Chowdhry
and Lall Beharee Ghose, (Plaintiffs,) Respondents.

INSTITUTED 2nd July 1845, decided 30th July 1847.

This case was fully reported and decided by this court on the 7th May 1849, *vide* page 17, Reports of Zillah Bhaugulpore for May 1849. The principal sudder ameen decreed the case in plaintiff's favor for rupees 1,213-14-3, being the profits of a farm from which the defendants had dispossessed the plaintiffs before the expiration of the lease; but, on appeal, this decision was reversed, because it was shown that a vakeel of the court had, in taking the lease, acted in contravention to Section 6, Regulation XXVII. 1814. On special appeal, the Court of Sudder Dewanny have remanded the case observing that they know of no law prohibiting a vakeel allowing other party or parties to carry on a suit in which he is principally interested, nor authorising a judge to dismiss peremptorily without judicial decision a case in which this may appear.

The case again came on for hearing in the presence of both parties.

JUDGMENT.

The vakeel alluded to, namely, Ramkanye Ghose, was employed both in the conduct of this case, and of the one for the reversal of the sale of the property for arrears of public revenue, of which a lease was subsequently given for a term of 16 years, and although Section 6, Regulation XXVII. 1814, has not been repealed by Act I. 1846, the above law does not authorise a judge to punish a vakeel by dismissing peremptorily a claim in which he may appear to be interested. Under these circumstances I see no grounds for interfering with the judgment of the lower court, which is hereby affirmed, with costs against the respondents.

THE 9TH MAY 1850.

Case No. 11 of 1848.

*Appeal from the decision of Moulvee Moazzum Hossein, Principal
Sudder Ameen.*

Mr. T. Taylor, Attorney of C. DeKerrone and Co., (Appellant,
Plaintiff,

versus

Government, Gisborne and Co., and others, (Respondents,
Defendants.

INSTITUTED 3rd July 1849, decided 2nd August 1848.

The plaintiff instituted this suit as zemindar of mouzah Chundee-pore, zillah Malda, to recover possession of 600 beegahs of land, with mesne profits (date of dispossession not stated) from the defendants, the zemindars of mouzah Hur Chundee-pore, with whom, notwithstanding a previous settlement with the plaintiff, effected by the deputy collector of Malda, the revenue authorities of Bhaugulpore had made a settlement. The plaintiff subsequently included the Government among the defendants. The answer of the Government and the other defendants was to this effect: that respecting this land there was a dispute between the former zemindar of Chundee-pore and the zemindar of Jumoonnee; the case was tried under Regulation XI. 1819, and a decree was given in favor of the Government; that the lands were directed to be measured, and settled with the Jumoonnee zemindar; that a boundary was marked out, and the area measured, which was found to contain 3,269 beegahs: a settlement was made in the first instance with Mr. Freeman, and subsequently with the defendants; the plaintiff has no right to the lands.

The late principal sudder ameen first heard the case, and dismissed the claim. On appeal, it was remanded, because he had decided the case on the report of an ameen deputed to the spot, without swearing him to the truth of his statement.

The present principal sudder ameen has also dismissed the claim.

The plaintiff has appealed from this decision on general grounds. The respondents were summoned to attend.

JUDGMENT.

From the exhibits filed by the appellant in this case, it appears that he entered into an engagement with the deputy collector of Malda, during the years 1842 and 1843, for the toufeer lands, appertaining to mouzah Chundee-pore, and he complains that he was dispossessed from a portion of these lands, amounting to 600 beegahs by the deputy collector, Zinooddeen Khan, when that functionary proceeded to the spot to settle the Hur Chundee-pore lands, in which he included the aforementioned 600 beegahs, and made a settlement

with the defendants as a part of Hur Chundeeopore. The papers filed with the record show, that, as far back as the 7th August 1833, the right of the Government to certain now formed lands, lying between the river Ganges, near the town of Rajmehal, was investigated under Regulation II. 1819, by Mr. Collector Ward, and the zemindar of Chundeeopore, Baboo Ashootosh Dey, appeared and claimed them as an increment formed from his estate; while Raja Gujraj Singh, the zemindar of Jumoonnee, claimed them for Hur Chundeeopore. The lands were decreed to the Government, and the zemindar of Chundeeopore appealed from the collector's decision to the special commissioner under Regulation III. 1828, stationed at Moorshedabad, who, on the 17th December 1836, upheld the award of the collector, and directed the measurement of the lands, and a settlement to be made with the zemindaree of Jumoonnee. In March 1837, Mr. Assistant Farquharson proceeded to the spot, and, after the issue of the usual proclamations, and a notice for the zemindar of Jumoonnee to attend and enter into an engagement for the lands, marked out the boundary, and measured the lands. On the completion of the measurement, he ascertained that the ameen had included 326 beegahs south of a cotton tree which formed the boundary in that direction. The error was rectified, and the area was found to contain 3,269 beegahs 8 cottahs. The zemindar of Jumoonnee not appearing, a farm of the lands was given to Mr. Freeman. In April 1842, Zinooddeen Khan, the deputy collector, attached to Bhaugulpore, was deputed to the spot to make fresh enquiries into the capabilities of the soil and to effect a settlement. During these enquiries the appellant appeared, and entered objections, stating that he had been dispossessed of 545 beegahs 10 cottahs of the Chundeeopore lands, which had become incorporated with the lands of Hur Chundeeopore; that when Mr. Assistant Farquharson came to mark out and measure these lands, he appointed one Tirlochan as measuring ameen, and that he had included the above lands belonging to Chundeeopore, with the Hur Chundeeopore lands; but that Mr. Farquharson had fixed upon a cotton tree as the boundary mark to the south, and petitioner (appellant) did not object to that boundary. Whereupon the deputy collector, to put a stop, as he records in his proceeding, to all future disputes, again subjected the lands to a measurement, and found them to correspond with the number of beegahs recorded by Mr. Farquharson, viz., 3,269, and as this area was within the boundary marks laid down by Mr. Farquharson, having the cotton tree to the south, to which the petitioner did not object, the deputy collector refused to entertain further the appellant's objections. Disputes continuing however, after the settlement made with the defendants, Mr. Deputy Collector Brown was deputed to the spot in March 1843, and, after investigation, laid down the same boundaries. An ameen has likewise been deputed by the court, and his report coincides with that of all the other authorities who have visited the spot. The only grounds the appellant would

seem to have for urging his claim to these lands are to be found in a proceeding of the deputy collector of Malda, Mr. Francis, who in April 1842 addressed the deputy collector Zinooddien Khan, and objected to his proceedings in including these lands with the lands of Hur Chundeeopore, observing that they belonged to mouzah Chundeeopore, and were attached to the Malda jurisdiction. This opinion, however, was subsequently overruled by the commissioner of the division. The appellant has not, in my opinion, succeeded in showing that he ever had possession of these lands, or that he engaged for them with the Malda revenue authorities, or that he has in any manner any right whatsoever to their possession. Ordered, that the decision of the principal sudder ameen be affirmed, with all costs to be paid by appellant.

THE 10TH MAY 1850.

CASE No. 13 of 1849.

Appeal from the decision of Moulvee Mahomed Rafiq, Sudder Ameen of Bhargulpore.

Synaput Singh Chowdhry, Boonead Singh Chowdhry, and after his decease, Moharaj Singh Chowdhry, for self and guardian of Ramlal and Gujraj Singh, minors, (Defendants,) Appellants,

versus

Goureenath Pandey, (Plaintiff,) Respondent.

CLAIM, rent of land, instituted 21st July 1848, decided 13th March 1849.

The plaintiff brought this suit to recover the arrears of rent due on a farm, which the defendants took on a nine years' lease, at a yearly rent of Sicca rupees 75. The arrears due were stated at Company's rupees 899-3-9. The defendants, while they admit the taking of the lease, demur to the amount of the arrears claimed. First, the sum of rupees 330-10-5 had been paid at different dates by the defendant Synaput, for a portion of which they held the plaintiff's receipts; secondly, the plaintiff held under his own cultivation in the farm 25 beegahs of ground, at the rent of 1 rupee per beegah; thirdly, there were lands held by the plaintiff and others, which would make the plaintiff indebted to the defendants in the sum of rupees 632-11-7½.

The sudder ameen, being dissatisfied with the evidence adduced by the defendants to prove the set-off, and it appearing that the claim for the lands held by the plaintiff had been brought before the moonsiff of Umurpore, decreed the full amount claimed in the plaintiff's favor.

From this decision the defendants have appealed, urging that the accounts were not minutely examined by the sudder ameen, and

that he had confounded this case with the one before the moonsiff. A summons was issued for the respondent to attend.

JUDGMENT.

This case and the one instituted in the moonsiff's court by the appellants, in which a decree has been given against the respondent, should have been heard and determined by the same tribunal. The appellants were not acting honestly in pleading as a set-off in this suit a claim which formed a cause of action before another court. On an examination of the receipts, which the appellants have produced for various sums paid to the respondents, I find that they amount to rupees 207-8-8, while the respondent had given the appellants credit for rupees 172-5-7½; but to two of these receipts the respondent objects, on the plea that they were not signed by him, and certainly the manner in which his name is written upon them does not resemble the signatures on the other receipts. Putting aside these two receipts, the items credited to the appellants in the respondent's account will coincide with the rest of the receipts produced by the appellants. I see therefore no grounds for disturbing the decision of the lower court, which is hereby affirmed, with costs.

THE 23RD MAY 1850.

Case No. 19 of 1849.

Appeal from the decision of Mr. C. Macdonald, Sudder Ameen of Monghyr.

Modha Konwur, (one of the Defendants,) Appellant,

versus

Golab Dass, (Plaintiff,) Respondent.

CLAIM, bonded debt, instituted 16th January 1849, decided 7th June 1849.

The plaintiff sued the defendants on a bond, dated the 9th Jyete 1250 F. S., promising to pay 200 Sicca rupees with interest on or before Kartick 1256 Fussily. The defendants had paid rupees 25 only, plaintiff therefore brings this action to recover rupees 318-7-7.

The defendant, Modha Konwur, denies, in his answer, all knowledge of the transactions: at the period when the bond was written, he resided at a distance of some 18 koss from the plaintiff's residence.

The defendant Prem Chowdrey states, in his answer, that Modha Konwur is a connection of his, and had transactions with the plaintiff, and wanted on a certain occasion to borrow rupees 200 from him, but plaintiff objected unless defendant became security for Modha. Defendant consented, and the money was paid over to Modha.

The sudder ameen decreed the case in the plaintiff's favor, as the execution of the bond and the receipt of the money had been fully established by the plaintiff's witnesses.

From this decision the appellant has appealed on general grounds.

JUDGMENT.

After perusal of the record I see no reason for interfering with the decision of the sudder ameen. The appellant objects to the witnesses, who have given evidence in the plaintiff's favor, but his objections are of a general nature. The stamp paper on which the bond is written was sold to the appellant; and although this circumstance of itself is no proof of the debt, still, as it is usual for the party borrowing the money to supply the stamp paper for drawing up the bond, it tends to corroborate the evidence adduced by the plaintiff in proof of the debt. Appeal dismissed, and the decision of the sudder ameen affirmed, without summoning the respondent.

ZILLAH EAST BURDWAN.

PRESENT: JAS. ALEXANDER, ESQ., OFFICIATING JUDGE.

THE 2ND MAY 1850.

Case No. 404 of 1849.

*Appeal from the decision of Gunga Churn Shome, Moonsiff of
Selimabad, dated the 12th November 1849.*

Birmoinoe Debia, (Plaintiff,) Respondent,

versus

Bhugwunt Bannoorjea, (Defendant,) Appellant.

VALUE of suit, 16 rupees.

This was a suit for maintenance. The plaintiff states that she is blind and her son is leprous; her son, being about to die, sold his right of jujman to the defendant at a fixed price, but received no actual money, there being an understanding that the defendant should support himself and his mother during their lives; the title deed, or kubala, was placed in the hand of a third party, one Nundram Kulloo, who was not to deliver it until after the death of the plaintiff. The defendant, having observed the conditions for some time, had ceased to make payment since Poos 1255: therefore the plaintiff sought to enforce her rights by a civil action.

The defence avers that there was a positive sale of the rights of jujman, for which payment was made in cash, denies that the title deeds were placed in the hands of Ram Kulloo, also pleads the insufficiency of the jujman to meet the demand.

The moonsiff found that the documents in the plaint were supported by the majority of the witnesses to the kubala, and although two witnesses declared that the price of the kubala had been liquidated, yet that they stated the payment was made at different intervals, whereas the defence declares that it was made at once. The result of local enquiries also went to prove the truth of the plaintiff's statement. There was also evidence of various endeavours to adjust the matter by compromise. Under these circumstances, the moonsiff decreed in favor of the plaintiff at the rate of two rupees per mensem.

Besides a general objection to the finding of the moonsiff, the two chief points in appeal were the insufficiency of the valuation of

the suit, and the want of enquiry as to the sufficiency of the assets to pay the demand upon them.

With reference to the decision of the moonsiff that the liability was proven by the parole evidence of the witnesses to the plaint, I have no doubt that is perfectly sound. With regard to the valuation, I do not see that the plaintiff had any reason to foresee that the defendant would plead that a full consideration had been paid for the kubala, and that it would be consequently necessary to sue for the full value of the consideration. I consequently pass over this ground of appeal.

With reference to the enquiry as to the sufficiency of the assets, the payments of jujman fees are so dependant on extraneous circumstances, and amongst these the conduct of the priest, that no enquiry would be likely to prove satisfactory; neither does it appear to me that the case would depend on the result of such enquiry; the best guide to a judgment in the case will be the price of the jujman in exchange for which the maintenance was to be given; this is admitted to be 90 rupees; the age of the plaintiff is 60 years: even at the high rate of interest which prevails in this country, she has purchased her annuity on favorable terms; but the defendant had the option of supporting her, and, having failed to do this, he was bound to afford her the means of support. I do not think it necessary to disturb the decision of the moonsiff.

THE 4TH MAY 1850.

Case No. 15 of 1850.

Appeal from the decision of Seetee Kaunt Singh, Moonsiff of Pothna, dated the 10th December 1849.

Baboo Khan, (Plaintiff,) Appellant,

versus

Talib Khan and others, (Defendants,) Respondents.

THIS case was on the first hearing decided in favor of the plaintiff (appellant,) but various doubts as to the accuracy of the decision occurred to the judge in appeal, and he desired the moonsiff to make further enquiry regarding them. The plaintiff was called on for additional proofs, but failed to produce them or in any way to satisfy the moonsiff on any of the points referred to him. Under these circumstances the moonsiff has dismissed his suit.

In appeal, the plaintiff (appellant) has introduced a number of new facts, which have never been brought to the notice of the court, and which, even if they appeared deserving of attention, could not now be enquired into. I dismiss the appeal.

THE 4TH MAY 1850.

Case No. 17 of 1850.

*Appeal from the decision of Nobin Kisto Paulit, Moonsiff of Cutwa,
dated the 26th December 1849.*

Mohanund Chuckurbutty, (Plaintiff,) Appellant,

versus

Manick Chunder Chuckurbutty and others, (Defendants,) Respondents.

VALUE of suit, 60 rupees, 11 annas, 7 pie.

This case was originally decided in favor of the plaintiff under a species of protest from the moonsiff, who remarked that, although receipts for the notice had been regularly signed, and the claim was not opposed, yet he doubted the genuineness of the bond.

The circumstances connected with the appeal are given in the reported Decision, No. 153 of 1849, October 20th, 1849.

The case was sent back, and the defendant denying the bond and adducing some strong reasons to prove that the whole claim was false, the moonsiff dismissed the suit.

In appeal, I can see no reason to question the soundness of the decision. The plaint must be dismissed, with full costs in both trials in both courts.

THE 7TH MAY 1850.

Case No. 18 of 1850.

*Appeal from the decision of Seetee Kaunt Singh, Moonsiff of Pothna, dated
the 12th December, 1849.*

Parbutty Churn Naik and others, (Plaintiffs,) Respondents,

versus

Nufeesoonnissa Beebee and others, (Defendants,) Appellants.

VALUE of suit, rupees 62-10-1.

This was a suit for the reversal of an order passed under Regulation V. 1812, and to recover the value of certain properties, which were unlawfully attached and appropriated by the defendants.

The title of the distrainer was based upon a deed of sale, dated Aughun 8th, 1248. The assertion is, that the plaintiffs, having sold their land to the defendants, ceased to become proprietors, but re-entered upon their land as tenants, agreeing to pay a yearly jumma, or rent, of 17 rupees; that, having failed to do this, they were liable to distraint. The distrainer has totally failed to prove his title, and the moonsiff has decided against him. I confirm the decision of the moonsiff.

THE 7TH MAY 1850.

Case No. 22 of 1850.

*Appeal from the decision of Seetee Kaunt Singh, Moonsiff of Pothna,
dated the 13th December 1849.*

Kazce Julalooddeen, (Plaintiff,) Appellant,

versus

Abdool Alce and others, (Defendants,) Respondents.

THIS suit was instituted by the plaintiff to try the validity of a distraint made by the defendants upon some crops in 7 beegahs of land said to be in the occupation of one Tupsoo, but which is, according to the statement of the plaintiff, in his own occupation, under a lease held from Hubeeboonnissa and others.

The defendant Tupsoo declares that this land is in his occupation, under a lease derived from the second defendant, who is the lessor, as representative of Syud Abdool Allee and Lootfoonnissa Beebee.

The moonsiff refused to enquire into the title of the lessors, and confined his investigation to the question as to whether the land agreed with that described in the plaintiff's pottah.

The ameen, deputed by the moonsiff to ascertain this point, sent in depositions of witnesses on both sides without reporting or deciding in favor of either.

The moonsiff called upon him to express an opinion as to whether the land was included in the plaintiff's pottah or not. The ameen reported that it was included in the plaintiff's pottah and not in Tupsoo's. The moonsiff then said that this decision was against the evidence, and dismissed the suit. It is to be presumed that the moonsiff, when he called upon the ameen for an opinion, felt that he was in want of further information; the only additional information afforded was in favor of the plaintiff, and yet the effect of it appears to have been to turn the scale against the plaintiff. The information before me is insufficient to enable me to judge whether the decision is in itself right or wrong; but I cannot see why it should be right. One point is omitted. It appears from the evidence of defendants' witnesses that Tupsoo has somewhat recently acquired the land in dispute; who was his predecessor, and why was he displaced? The moonsiff, having confined his enquiry to one point, was bound to make a very complete investigation on that point: he has failed to do so. The case must go back to him to perfect his enquiries, and support his decision by a statement of such facts and arguments as will enable an appellate court to understand the grounds of his decision.

THE 7TH MAY 1850.

Case No. 23 of 1850.

Appeal from the decision of Nobin Kisto Paulit, Moonsiff of Cutwa, dated the 21st December 1849.

Rass Mohun Dutt, (Plaintiff,) Respondent,

versus

Seetanath Huldar, (Defendant,) Appellant.

VALUE of suit, 8 rupees 12 annas.

Plaintiff, having set forth his title, states that the defendant hired his house, and did not pay his rent from Assar 1255 to Assin 1256, the said rent being at the rate of 8 annas per mensem.

The defendant denies having given a kubooleut for the house, and says that the house belongs to his cousin, and that he lives in it rent-free, and repudiates the kubooleut as a forgery.

The moonsiff finds that there is evidence to prove the execution of the kubooleut and the hiring of the house; the defendant refused to come into court and write so as to enable the moonsiff to judge whether his handwriting corresponded with that on the kubooleut; there was no opposition offered on the part of defendant's alleged lessor.

On appeal, it appears that the defendant's answer was given in after the prescribed time, and the moonsiff received it under protest, or rather allowed it to remain with the papers of the case; subsequently, having some doubt as to whether the handwriting on the kubooleut corresponded with that on other papers in the case, he sent for the defendant to write before him; but the defendant failing to come in, he decided the case against him: it is now urged that the defendant, having been called upon to appear in court as to one point, should have been permitted to plead in all. I consider that the moonsiff was quite competent to endeavour to satisfy himself on one point; and that the defendant having failed to attend to his requisition, that the presumption was that he did not wish to stand the test of the comparison of his handwriting with that on the kubooleut. I confirm the decision of the moonsiff.

THE 9TH MAY 1850. •

Case No. 25 of 1850.

Appeal from the decision of Seetee Kaunt Singh, Moonsiff of Pothna, dated the 17th December 1849.

Durre Bewa, (Defendant,) Appellant,

versus

Kazee Syud Nasir Ally, (Plaintiff,) Respondent.

VALUE of suit, rupees 63-7-9.

This case was sent back to the moonsiff of Pothna under orders of 22nd October 1849, which (page 128) are duly reported, for

revision of the assessment on the defendant's lands. The former assessment was 70 rupees, 9 annas, 16 gundahs, upon 18 beegahs, the present is 63 rupees, 7 annas, 5 gundahs upon the same quantity of land. The rate is very high, and the principle upon which the assessment has been made is evidently erroneous. With reference to a portion of the land, the moonsiff has adopted the rates for which a decree had been obtained in another village. It is not, however, shown that the circumstance of the two villages are the same.

There appears reason to question the classification of the land; the amount classed as of first quality and assessed accordingly, is very great and disproportionate to the amount of first land usually included in one joot. Again, it appears that some of the lands of this identical village have already been assessed under a decree of court, and that the defendant was anxious to abide by this assessment, and offered to produce evidence as to what it was. It was imperative on the moonsiff at any rate to take this assessment into consideration, before he adopted a standard appointed for another village. With reference to the remaining land the moonsiff has struck an average between the rates deposed to by the witnesses for the plaint and those for the defence; this is a most unsatisfactory mode of proceeding. The moonsiff should have ascertained the exact rate, instead of contenting himself with devising means, which might or might not lead to an approximation to the truth. It will not be to his credit if it is necessary to send the case back a fourth time. He must now by reference to impartial witnesses, to the village accounts, to former decrees, to actual existing assessments on other ryuts, or to any other source from which the truth may be elicited, ascertain the prevailing rates and assess accordingly. The expense of this last assessment and appeal must be borne respectively by the parties to the suit.

THE 9TH MAY 1850.

• Case No. 26 of 1850.

*Appeal from the decision of Nobin Kisto Paulit, Moonsiff of Cutwa,
dated the 22nd December 1849.*

Ramdhun Doss, (Plaintiff,) Respondent,

versus

Nemy Churn Doss and Oottum Doss, (Defendants,) Appellants.

THE plaint states that plaintiff held $1\frac{1}{4}$ biswa of land under Nemy Churn Doss; that Nemy Churn Doss let half of one biswa of it to Oottum Churn Doss, but gave plaintiff no reduction in his rent; that plaintiff resigned his entire holding and took up another residence, but that his former landlord, in spite of his resignation, pursued him and obtained a decree for his rent, even although he

(the defendant) had let the holding to another individual, one Nubing Bewa, his (plaintiff's) mother-in-law. Under these circumstances the plaintiff, having had to pay rent, considers himself entitled to sue to recover possession of the holding.

The defendants declare that the plaintiff is already in possession of one biswa, for which he pays two rupees, and that his brother, Hurradun Doss, held another $\frac{1}{2}$ biswa; that on the death of Hurradun Doss, his widow sold the plot to one Oottum Doss, who discharges the rent; the plot is distinguished by a wall built by Hurradun.

The second defendant supports the first.

The moonsiff entertained the suit, and decreed in favor of the plaintiff. The plaintiff may have sustained some injury; but, in my opinion, it is impossible to afford him a remedy in the way in which he sought it. He has in the first instance offered no evidence as to the existence of any contract or lease; and, if it did exist, he, by his own showing, by his own act in resigning his holding and going elsewhere, put an end to the contract. The fact is that he made a formal resignation, but kept virtual possession by keeping his mother-in-law in the house.

The defendant, considering him responsible for the rent, sued him for the full amount and obtained a decree. The plaintiff did not appeal against this decree, but sued for possession of the land in which the new ryut had been planted. It appears to me, by his resignation and abandonment, as alleged by himself, he threw up his former title; and that the decree for rent could not give him any new title. Under these circumstances, I think the moonsiff was wrong to entertain his suit, and I accordingly reverse the decree in his favor.

PRESENT: J. H. PATTON, Esq., JUDGE.

THE 15TH MAY 1850.

Case No. 252 of 1849.*

*Appeal from the decision of Moulvee Ally Hyder, Moonsiff of Bamunara, dated the 21st May 1849.**

Khoodeemunnee Dossee, (Plaintiff,) Appellant,

versus

Manick Dey and others, (Defendants,) Respondents.

SUIT laid at rupees 111-13-14, to obtain possession of 5 beegahs of land, family property, including wassilat.

Plaintiff stated before the lower court that she inherited certain landed property in common with the defendants' ancestors; that 5 beegahs of that property fell to her share, and that she made the same over to defendant in joint cultivation and a share in the crops,

producing an agreement (kubooleut) under his signature in proof of her claim.

Defendant, Manick Dey, denied the allegation of the joint lease, and maintained his possession of $2\frac{1}{2}$ beegahs of the land by the right of purchase from plaintiff by his father for 19 rupees under a deed of sale (kubala) on stamp paper.

One of the other defendants, Muddun Dey, admitted the truth of plaintiff's claim against himself, and supported her statement of the joint lease and the execution of the engagement by Manick Dey.

The moonsiff decrees the case against the defendant, Muddun Dey, on the grounds of his admission of plaintiff's claim, but records a verdict in favor of the defendant, Manick Dey, because, in his judgment, the deed of sale bears the impress of authenticity rather than the lease.

The grounds of appeal, besides the considerations urged in support of the claim, are: that as a childless widow is barred by the shasters from the alienation of family property, the appellant, being in that predicament, could not possibly have sold the land to defendant, and that, if she had, the sale was null and void in law; that there was moreover no occasion for the purchase of the land by the defendant, as, being heir at law, the inheritance would of necessity come to him; and lastly, that the deed of sale was a forged and fabricated instrument prepared with the view of depriving appellant of her right.

The respondent lays considerable stress on the fact of the appellant having omitted to make mention of the lease in the original petition of plaint, which, as being the main stay and support of her claim, she ought to have done, and, by inference, casts doubt and suspicion on the genuineness of the instrument.

The point for consideration in this case is simply the authenticity and genuineness of the two instruments submitted in proof of the pleas set up, and which of the twain is most entitled to credibility and weight. From the arguments advanced in support of the appellant's suit, and the evidence adduced in favor of it, I am clearly of opinion that the lease claims the priority of choice, and to it I accordingly assign it. I am not disposed to place much weight on the omission noticed by the respondent, for the document was filed at a very early stage of the proceedings; and, considering the relative position of the parties, the actual delay is of no moment. The deed of sale, on the other hand, I regard with extreme suspicion, as the freshness of the writing ill accords with the oldness of the paper, and the writer of the instrument has all the appearance of a paper man, being represented as a byragee, or vagrant, by profession, and not having been produced in court and examined as to the preparation of the document. The principal subscribing witness, moreover, failed to identify the deed among the records of the case when called on to do so by the moonsiff, and the papers placed before him.

In consideration of the above circumstances I decree the appeal, and, in modification of the moonsiff's decision, direct that the appellant obtain possession of the entire land sued for, together with the profits accruing thereon, with interest from the date of plaint ; and that the costs of the suits in both courts be borne by the respondent.

THE 15TH MAY 1850.

Case No. 265 of 1849.

Appeal from the decision of Gopal Chunder Ghose, Moonsiff of Bhattoorea, dated the 30th May 1849.

Rangopaul Chunder, (Plaintiff,) Appellant,

versus

Neelkaunt Pal, (Defendant,) Respondent.

Kunnyelall Bose, Claimant.

THIS was an action brought by the appellant (plaintiff,) to recover the sum of rupees 129, annas 8, principal and interest, on a bond and mortgage of 1 anna, 12 gundahs, 2 cowries share of the talook of Sheeb Brambatee.

Defendant (respondent) denies the debt, and avers that his share of the talook in question was 3 annas, 5 gundahs, of which he sold one half to Sumbhoo Mudduck in the month of Assin 1250, and the other half to Kunnyelall, the claimant in this suit, in the month of Assar 1253. The claimant sides with the defendant, and confirms the above statement.

The moonsiff rules that, although the appellant produces a bond and three subscribing witnesses, the instrument, in his opinion, is unworthy of credit for the following reasons:—first, that the writer of the bond is deceased; secondly, that the subscribing witnesses are illiterate and ignorant men, unable to read or write; thirdly, that one of them is a paid servant of the appellants; fourthly, that there is a discrepancy in the evidence; and lastly, that the bond has not been registered.

Had the moonsiff confined himself to the investigation of this suit, and given such an award as, in his judgment, was right and proper, I should have proceeded with the appeal, and decided it on its merits; but instead of this, I find, no less to my surprise than displeasure, that he has blended the enquiry of two cases into one, and recorded two decrees in one proceeding (roobakaree). It is true that he solicited and obtained permission to try both suits together, the other being for balance of rent, case No. 100 of his court, in which Kunnyelall (claimant) was plaintiff and Neelkaunt Pal respondent (defendant,) but it was quite beyond expectation that he should handle them in the irregular manner he has done.

In consequence of the decision of the moonsiff being contrary to law and the established usage of court, I quash his proceedings, without reference to the merits of the enquiry, and direct that the case be remanded for re-trial, and the moonsiff admonished for the irregularity committed.

THE 18TH MAY 1850.

Case No. 268 of 1849.

Appeal from the decision of Mahomed Sayem, Sudder Ameen of Burdwan, dated the 29th May 1849.

Azeezunissa Beebee and others, heirs and survivors of Rujceboollah, (Defendants,) Appellants,

versus

Peer Mohummud, (Plaintiff,) Respondent.

SUIT laid at 30 rupees, 4 annas, in furtherance of a claim for possession of 2 cottahs of land, together with the price of trees, in annulment of a summary proceeding by the session judge in appeal under the provisions of Act IV. 1840.

The plaint in the original suit goes to prove that respondent possessed a parcel of land in Rancegunge, in the town of Burdwan, on which are situated two dwelling houses and an imambarrah, in one of which he resided and the other he rented or leased; that he mortgaged the latter for 20 rupees to the appellant, and not being able to redeem, a suit for the foreclosure of the mortgage was instituted and decreed, and possession given to appellant. To get land in excess of the quantity decreed, he filed a suit in the magistrate's court under Act IV. 1840. The case was referred to the moulvee for enquiry, who dismissed the plaint. It was subsequently appealed to the session judge, who, in annulment of the moulvee's verdict, gave an order for appellant's possession.

The sudder ameen ruled that the land in dispute is beside the land decreed to appellant in the suit for foreclosure under Regulation XVII. 1806, and beyond the boundaries defined therein, and that his possession of it is arbitrary and unlawful.

I consider the sudder ameen's view correct, and see no reason to disturb the award given by him. I visited the spot in person, and the local enquiry confirmed the soundness of the judgment.

THE 20TH MAY 1850.

Case No. 8 of 1850.

*Appeal from the decision of Nubeen Kishen Paulit, Moonsiff of
Cutwa, dated the 6th December 1849.*

Sreenath Rai and others, (Defendants,) Appellants,

versus

Gooroochurn Jogee and others, (Plaintiffs,) Respondents.

SUIT laid at rupees 24, to recover a receipt for revenue paid, and compensation for withholding the same, equivalent to double the original amount.

The plaint urges that Gooroochurn and others held lands, for which an annual rent of 22 rupees 3 annas was paid; that in Assin 1255, the defendants took the farm of the village in which the land was situated, and demanded an enhanced rent, filing a suit under Regulation V. 1812, and fixing the amount at 32 rupees; that the plaintiffs deposited the amount sued for and instituted proceedings to set aside the decree; that in Bhadoon 1256, the defendants demanded the rent due, on which plaintiffs tendered 8 rupees; that the amount was received, but on a receipt being required, it was peremptorily refused without a further payment of 4 rupees.

The defence altogether denies the offer and payment of the revenue, and goes on to aver that there is a registered jumma in the plaintiff's name of rupees 23-14-5-1, and in that of his son, a minor, of rupees 8-13-2-2, making a total of rupees 32-12-7-3, and not 22 rupees 3 annas, as stated by him, and sets up an *alibi* at the time of alleged payment.

The moonsiff is of opinion that the revenue has been paid by the plaintiffs, and considers them entitled both to the receipt and compensation, and decrees accordingly.

The grounds of the appeal are, that only two witnesses have proved the payment, one of whom is a relative of the respondents, and the other a person of mean extraction and low condition, residing, moreover, at a distance from the scene of action; that a third party was named by the respondent as an evidence of the fact, who disavowed all knowledge of it, and that there is no good and substantial reason why the moonsiff should believe the statement of the respondents' witnesses, and disbelieve that of the appellants, who have proved their plea.

I concur in the justice of the appeal, and consider the proof adduced in favor of the payment incomplete,—the only point to be decided in this case.

The respondent, moreover, fails to attend, and allows the suit to go by default, although he has duly signed the notice requiring his attendance at a given period. I therefore decree the appeal,

and reverse the decision of the moonsiff, directing that the costs of the suits in both courts should be borne by the respondents.

THE 20TH MAY 1850.

Case No. 21 of 1850.

Appeal from the decision of Seetee Kaunt Singh, Moonsiff of Pothna, dated the 15th December 1849.

Pearce Munnee, (Defendant,) Appellant,

versus

Becharam Ghose, (Plaintiff,) Respondent.

THIS was a suit to assess certain lands, with an annual rent of rupees 46-0-4.

This case is reported in page 107 of the printed Zillah Decisions for July 1849, by Mr. H. C. Hamilton, and his reasons detailed for remanding it for re-investigation.

The moonsiff appears to have paid little regard to the orders above issued, as the result of the second enquiry is in effect the same as the first, the award being in slight modification, and that only in the amount decreed, of that originally given. Some of the premises, however, which have led him to the conclusion are altogether new, and being in themselves important as bearing on the case, disregard of them in the original enquiry unquestionably argues one of two states, namely, either that their existence is a chimera, or that the moonsiff evinced a sad and culpable want of discrimination in the conduct of the suit in having lost sight of them. The circumstance to which I allude is the discredit now thrown by the moonsiff on the pottah produced by the appellant, and his rejection of it on the grounds of not being a *bonâ fide* engagement, but an instrument surreptitiously and fraudulently acquired; while in the former enquiry his exception to its validity had altogether another and a diametrically opposite basis.

This view of the case by the moonsiff is, in my opinion, not only forced and unwarranted by the evidence adduced by the appellant, but open to grave suspicion, and a very reprehensible leaning to the respondent's cause, evincing a blind and wilful furtherance of his interests without regard to law or justice. There is not the slightest ground, in my opinion, to call into question the validity and genuineness of the engagement, as it is in the first instance admitted by the respondent in all its virtue, and in the second fully established as a *bonâ fide* instrument by the evidence of witnesses and the production of corroborative receipts for revenue paid for a series of years. There can be no doubt, therefore, of the possession of the appellant under the title of the engagement until disturbed by the respondent, nor of the unsusceptibility of that engagement to cancelment under

the provisions of Clause 3, Section 11, Regulation VIII. 1819. I therefore decree the appeal, fixing the assessment in conformity with the terms of the engagement, namely, at rupees 20, 4 annas, and, in reversing the order of the moonsiff, deem it my duty to apprise that officer that a repetition of a similar dereliction of duty on his part will subject his conduct as a judge to grave and serious notice. There are other circumstances in the investigation of the moonsiff, such as approving of the award of some of the arbitrators in fixing the rates of the land in question in one enquiry, and rejecting the same in the other, equally censurable and equally affecting the soundness of his decision; but I have not thought it necessary to dwell on them, or bring them into prominent notice.

THE 20TH MAY 1850.

Case No. 11 of 1850.

Appeal from the decision of Seetee Kaunt Singh, Moonsiff of Pothna, dated the 15th December 1849.

Becharam Ghose, (Plaintiff,) Appellant,

versus

Pearee Munnee, (Defendant,) Respondent.

THIS case is identical with the foregoing, and the arguments and evidence in both alike.

The grounds of the appeal are that the moonsiff has not sufficiently assessed the land, whereas it is quite clear that he ought not to have assessed it at all, or raised the rent beyond that borne on the engagement filed by the respondent. The appeal therefore for an enhanced rent is dismissed. For further particulars *vide* above.

THE 21ST MAY 1850.

Case No. 27 of 1850.

Appeal from the decision of Moonshee Khodabuksh, Moonsiff of Culna, dated the 26th December 1849.

Gobind Chunder Chuckraborttee and others, (Defendants,) Appellants,

versus

Moomtad Hyder and others, (Plaintiffs,) Respondents.

SUIT for arrears of rent, laid at rupees 9-0-17, together with interest.

Plaint avers that in the ayma of Singral there is a fixed jumma, or rent, in the name of one of the defendants, Rogoonath Chuckurbuttee, of rupees 8-8-10-2-2, who has sub-rented the same to the other defendants, and they have uniformly paid the rent as under his sanction. In the year 1255 they failed to do so, and hence this suit.

The defendants, Gobind Chunder Chuckurbuttee and Madhub Chunder Chuckurbuttee, on the other hand, deny that they are the under-tenants of Rogoonath. They admit that, in Poos 1248, an engagement was granted to Rogoonath by the plaintiffs; and that they being at the time on friendly terms with their relative, they obtained possession in common with him; but that in 1252 a division of the family rights and properties took place, and the lot in question fell to their share, though Rogoonath's name still remained registered in the books, in consequence of which they paid the rent as under his sanction, or through his agency, as the case may be. That this state of things continued until Assin 1255, when, owing to a dispute with the gomashtha of the plaintiffs, he scratched the payments they had made, and brought this suit against them. Their plea is full and perfect payment of all dues.

Ragoonath also files an answer, the purport of which corroborates the above statements.

The moonsiff rules that the pleas of the defendants have not been made good for reasons stated, and decrees the case against Gobind Chunder and Madhub Chunder, excepting Rogoonath from its operation.

The grounds of the appeal on the part of the above are, that their witnesses are as credit-worthy as those of the respondents, and that there is no good reason why the moonsiff should accept the testimony of the one and reject that of the other; that their proof of payment was full and complete of all the rents due; and that, if there was any doubt on the moonsiff's mind as to the genuineness of the receipts filed by them in support of the fact, he ought to have tested their veracity by the examination of the respondent's agent, who was present in his court, and able to speak as to their authenticity or otherwise, his alleged signature being affixed thereto.

I think the moonsiff's decision incomplete and faulty in two respects: first, that he has omitted to state the grounds on which he has exempted Rogoonath from the operation of the decree made against Gobind Chunder and Madhub Chunder, which, I confess, I am utterly unable to comprehend, he being the registered tenant and liable, and they merely his sub-lessees, and not liable for the rent; and secondly, that he has neglected to test the validity or otherwise of the revenue discharges filed by the appellant by the testimony of the respondent's gomashtha or agent. I therefore decree the appeal, and remand the case for the supply of the omissions noticed.

THE 21ST MAY 1850.

Case No. 28 of 1850.

*Appeal from the decision of Moonshee Khodabuksh, Moonsiff of Culna,
dated the 26th December 1849.*

Gobind Chunder Chuckurbutee and others, (Defendants,) Appellants,

versus

Moomtad Hyder and others, (Plaintiffs,) Respondents.

SUIT for arrears of rent, laid at rupees 11-5-10.

This case is precisely similar to the foregoing in all its bearings, with the single exception that the name of the registered tenants are Gopaul Sheikh and Purbuddee Sheikh, and the suit for rent for another parcel of land in the same estate. The nature and purport of the enquiry, and the decision come to, are identical with those in the preceding case, and the same reasons exist for its being remanded for re-trial.

THE 25TH MAY 1850.

Case No. 31 of 1850.

*Appeal from the decision of Mahomed Sayem, Sudder Ameen Moonsiff
of East Burdwan, dated the 31st December 1849.*

Sheikh Roohullah and others, (Defendants,) Appellants,

versus

Nethromaye Dabce, (Plaintiff,) Respondent.

SUIT to assess land at an annual rent of rupees 18-5-12.

The facts averred by the plaintiff in the lower court are, that in the beginning of the year 1255, she purchased an estate entitled Chukboora, in which, in village Chotojote Sojah, defendants hold 4 beegahs 2 cottahs of land in the name of their sons on an inadequate rent, and that, with the view of raising the rate, and making an equitable assessment of the land, she issued a notice to the defendants, which notice they disregarded.

The plea set up in defence by Roohullah is, that as the plaintiff is only a "benamee" talookdar, and not the actual proprietor of the estate, which belongs to Hurree Singh Rai and Ambika Pershad Rai, who purchased it in her name, she being a relative, her institution of the suit is barred by law. He goes on to state that the purchase was effected by the Rais, under a deed of sale from Beharee Lal Ditchit, who held the estate under a putnee tenure, and executed engagements with him and others for portions of the land, according to which he and they discharged the rents; that Hurree Singh and Ambika Pershad, knowing that they could not cancel the

engagement of the former proprietor, designedly allowed the estate to fall into balance for arrears of rent, and had it sold by public auction, re-purchasing it benamce, and getting the plaintiff's name registered as proprietor; that he holds two engagements executed by Beharee Lal in his son's name, one dated 11th Chyte 1245, for 1 beegah 12 cottahs, at a rent of rupees 3-9-12, and the other 26th idem, for 16½ cottahs, at a rent of rupees 1-10-8, making a total of 2 beegahs 8½ cottahs, at rupees 5-4, which amount is even excessive, considering that neither parcels of the land are of superior quality, and the quantity, moreover, less than stated by the plaintiff, (this refers to the first, which she declares to be 2½ beegahs, and he 1 beegah 12 cottahs as above;) and lastly, that the plaintiff has dispossessed them of 8 cottahs of lakhiraj land, which is beside and exclusive of the estate.

The plaintiff, in her rejoinder, repudiates the engagements filed by the defendant, and pronounces them fabrications, procured in collusion with Beharee Lal after the sale of the estate, and declares that the land in question let at a higher rent under the former proprietor than that paid by the defendants, and that his claim of the lakhiraj is false and unfounded, having been tried and lost in suit No. 4405, in the sudder ameen's court, in which Mohun Dome was plaintiff, and he defendant, which decision was upheld in appeal.

Two petitions of claim are presented in favor of plaintiff's assumed rights, one by Muddoosoodun Malek and the other by Teetoo Mirdhah, and filed.

The decision of the moonsiff rules that the plea of collusive purchase of the estate advanced against the plaintiff by the defendants is not proved, because the sale was effected at a public auction; that that point settled, the next questions to be decided are: first, whether there exist any proofs of the lakhiraj claim set up by the defendants? secondly, whether any enhancement of rent can be effected on the engagements produced by them? thirdly, what quantity of land is included in those engagements? and lastly, at what rates those lands should be assessed? The moonsiff disposes of the first point by ruling that the defendants are unable to produce any evidence in support of the plea advanced, and that the decision above quoted is conclusive as to the fact of the land being rent-paying and not rent-free.

With regard to the next question in order, he is of opinion that the purchase by the plaintiff of the estate at public auction cancels all former engagements though signed, sealed, and delivered, and that Beharee Lal's admission as to the execution of the present, can be no bar to an increase of assessment being levied on the lands they include, particularly as they are subsequent to the decennial settlement, and consequently inoperative as to the exemption sought by the defendants. Referring to the quantity of land involved in the suit, the moonsiff rules that it has been ascertained by actual mea-

surement, by an ameen deputed by him for that purpose, to be 2 beegahs, 12 cottahs, 6½ chittacks, and, referring to the rates at which it should be assessed, declares as fair and equitable the sum of rupees 10-8-0-1, being in conformity with the copy of a nerik-nameli filed by plaintiff as produced in suit No. 14317, and the report of the arbitrators pronouncing the land of superior quality, and fixing the rate accordingly.

Without entering into the merits of the case, the grounds of the appeal are, that the suit has been tried *ex parte*, and that, had an opportunity been afforded, the applicants would not only have adduced proof of their lakhiraj tenure, but filed other documentary evidence, and advanced more solid arguments in support of their plea.

This suit, I find, was originally filed in the court of the moonsiff of Kytee, and all the necessary pleadings conducted before him. At this stage it was transferred, in common with a number of cases from that and other chowkees, to the court of the sudder ameen and moonsiff under instructions from the Superior Court, and that functionary pronounced judgment on the averments and pleas set up by the litigant parties at the moonsiff's court. The respondent appears to have been present, but not the appellants; and though I find among the record a notice calling upon the latter to appear and prosecute the case, yet that notice is clearly illegal, inasmuch as it does not specify the period within which its conditions were required to be observed. Besides, the process, which should have followed the disregard of the notice, does not appear to have been issued at all. Under these circumstances, I quash the proceedings of the sudder ameen and moonsiff as informal and incomplete, involving legal omissions quite unpardonable in an officer of his rank and standing, and decree the appeal, remanding the case for re-trial in conformity with law and established usage.

THE 27TH MAY 1850.

Case No. 32 of 1850. *

Appeal from the decision of Tuffuzzul Ruhman, Moonsiff of Ousgong, dated the 20th December 1849.

Doorga Churrun Ahungur, (Plaintiff,) Appellant,

versus

Gopaldas Byragee, (Defendant,) Respondent.

SUIT, to recover rupees 27-2-11, principal and interest on a promissory note.

Plaint avers that the defendant borrowed rupees 21, on a promissory note, bearing date 23rd Aughun 1253, and payable in the month of Chyte following.

Defendant denies the debt, and pleads an *alibi* at the time the alleged loan is said to have been contracted. He further maintains

that a quarrel took place between him and the plaintiff in 1253 about a roadway, and that in Bysack 1256 he sued plaintiff under the provisions of Act IV. 1840, in the criminal court, for breaking down his hedge; adding that the present action had been brought against him from motives of revenge.

The moonsiff dismisses the case on the following grounds :—first, that there is discrepancy in the evidence of the witnesses on material points; secondly, that the institution of the defendant's suit under Act IV. is anterior to the institution of the present action; thirdly, that ill-will and feelings of animosity have existed between the litigant parties for upwards of two years; fourthly, that the defendant's plea of absence in Calcutta at the time the debt is said to have been contracted and the bond signed, has been established; fifthly, that the delay with which the plaintiff has brought this action creates misgivings in the mind as to the truth and genuineness of his claim; and lastly, that his objection to refer the matter to arbitration by unprejudiced parties, an option accorded to him during the enquiry, is a *prima facie* evidence of the unsoundness of his cause.

The reasons urged for appeal are insignificant, and refer almost entirely to the alleged fact that the moonsiff has arrived at conclusions false in themselves and unsupported by the evidence and pleas advanced.

I have carefully examined the premises and deductions drawn from them, and have no hesitation in pronouncing the latter both natural and correct. There is no reason, therefore, why I should interfere with the decision of the moonsiff, which is hereby maintained, and the appeal dismissed.

THE 28TH MAY 1850.

Case No. 35 of 1850.

*Appeal from the decision of Seetee Kaunt Singh, Moonsiff of Pothna,
dated the 20th December 1849.*

Juggo Mohun Bannerjea, (Plaintiff,) Appellant,

versus

Ramnath Ahungur and others, (Defendants,) Respondents.

Nund Koomar Banerjea, Claimant.

THIS was an action to obtain possession of land, with mesne profits, estimated at rupees 62.

Plaintiff's claim rests on a benamee purchase of 19 beegahs 10 cottahs of land, rented at rupees 28, 5 annas, sold in execution of a decree held by Neelmunnee Debia (No. 155,) against Hurree Ahungur and Nerain Ahungur. The purchase was made in the name of Muddoosoodhun Ghose, and a certificate obtained, bearing

date 16th of June 1841, in virtue of which plaintiff proceeded to take possession, but was opposed by the defendants. It is necessary to state that the Ahungurs held the land also benamee in the name of Sonatun Sircar and Muddun Khan.

Muddoosoodhun Ghose files an answer, and affirms the benamee purchase in his name, disclaiming, at the same time, any proprietary right or title to the land by means of the purchase.

Gokulchunder Thakoor and others, proprietors of the soil, allege that their ancestor Nursingdeb Thakoor purchased the estate of Kolkole in 1244, benamee in the name of their relative, Nund Koomar Banerjea, at public auction under Regulation VIII. 1819, in which the land in dispute is situated; that they in Nund Koomar's name obtained a decree against the said Ahungurs for arrears of rent, and executed the same in No. 1506, when their right, title, and interest were purchased benamee by Nund Koomar, in the name of Muddun Khan, for 12 rupees, 2 annas; but as the receipt for the purchase money was given by Nund Koomar, the certificate was drawn out in his name, and bears date 22nd of November 1840; that Nund Koomar subsequently paid the amount of the purchase money, rupees 12, 2 annas, to their ancestor, and thus himself became proprietor of the land; that the execution of the decree No. 1506 is anterior to No. 155, and that the latter was a fraudulent and collusive proceeding on the part of Neelmunnee Debia, and an attempt to effect two executions of one decree.

The answer of Nund Koomar Banerjea corroborates the above in substance and purport.

The moonsiff altogether favors the view of the fraud as perpetrated by Neelmunnee Debia and founds his judgment thereon. He gives the preference to the purchase under execution, No. 1506, as of anterior date, and maintains it in all its bearings, rejecting as untenable the claim under the other, No. 155. He further affirms the pleas set up in defence by a reference to the zemindaree papers filed by the claimant and attested by the gomashtha, which extend over a series of years, and exhibit the mutation of Nund Koomar's name for that of Nerain Ahungur in 1247. He therefore dismisses the plaint.

The grounds of appeal are that little reliance ought to be placed on the entries in the zemindaree papers, as the claimant's interests are identical with the zemindar's, and there was little difficulty in preparing a record that would embrace and further both; and that Neelmunnee's proceedings could not be considered fraudulent, as they were done openly, and no exception taken to them, while in operation, by the party most interested in their discomfiture.

I have weighed well the pleadings and issues in this case, and can find no grounds for interfering with the decision recorded by the moonsiff. I therefore dismiss the appeal without issuing a notice for the respondent's attendance. I should have been better pleased

with this decision as a full and complete judicial enquiry, had the moonsiff embraced in it the disposal of the question of fraud perpetrated by Neelmunnee, and an exposition of the ways and means by which it was accomplished; but the fact is sufficient for all the purposes of this appeal, and there seems little doubt of that.

THE 31ST MAY 1850.

Case No. 2 of 1850.

Appeal from the decision of Mahomed Sayem, Sudder Ameen of East Burdwan, dated the 24th January 1850.

Chundermohun Rai, (Plaintiff,) Appellant,

versus

Gopeekanund Mohunt Thakoor, (Defendant,) Respondent.

ACTION to recover principal and interest of a bond debt, laid at rupees 580-2-13-1-1.

Plaintiff avers that, on the 13th Phalgun 1254, defendant borrowed rupees 500 from him, and gave him a promissory note, the conditions of which were that the amount was to be repaid in the ensuing month of Chytc, and all payments on account noted on the back of the note, which mode of intermediate settlement was to be considered binding on both parties and none other. A supplemental petition was subsequently filed by the plaintiff, purporting to correct an error in the date of the bond, committed by the engrosser of the instrument, which should be 13th Kartick and not 13th Phalgun.

Defendant denies the debt and disavows all monetary transactions with plaintiff. He pleads an *alibi* at the alleged period of the advance, and affirms that he went to Moorshedabad in Maugh 1254, and remained there till Jytc. He describes himself in circumstances independent of pecuniary aid from any party, and disclaims seeking it from plaintiff as at the expense of his dignity and position in life. He pronounces the present proceedings against him as the result of hostile feeling, and assigns the following reason, namely, that the plaintiff purchased the putnce tenure of Sreekund, the village in which he resided, and on his pursuing a system of extortion and oppression against the tenants disputes arose between them regarding settlements of land, which issued in appeal to the criminal court and the punishment of plaintiff's agents and servants. Defendant further takes exception to the evidence of the witnesses for the prosecution and non-registry of the bond, and affirms that the alteration in the date of that instrument was made in consequence of his plea of absence at Moorshedabad at the time the debt is said to have been contracted, or in the month of Phalgun. He also objects to the calculation of interest, which from the latter date up the date of suit should be rupees 59-8 annas, and not the amount assumed in the plaint.

The sudder ameen decides that the suit is a fabrication, and dismisses it on the following grounds:—first, that the alteration in the date of the bond being subsequent to the filing of the defendant's answer, the change in the record was evidently made with the view of counteracting his plea of absence; secondly, that monetary transactions to the extent of the present, are not usually effected between parties without personal security or the mortgage of property; thirdly, that the terms on which plaintiff and defendant were rendered it extremely problematical that either would incur from the other a pecuniary obligation; fourthly, that the subscribing witnesses to the note of hand were non-residents, and lived, some 10, some 12 koss from the scene of action, and, moreover, denied all acquaintance with the defendant before the day of the execution of the bond; fifthly, that plaintiff had adduced no documentary evidence of the demand for repayment; and lastly, that the defendant had established his case in the most satisfactory manner both by the exhibits filed and the witnesses examined.

The grounds of appeal are that the calculation of interest, as borne on the original plaint, will prove that the error in the date of the note of hand was an inadvertence and not designed, as the amount clearly shows it to have been computed from Kartick and not Phalagoon; that there was no necessity for the documentary evidence in proof of the demand for repayment insisted on by the sudder ameen, and the fact is established by witnesses; and that that officer has taken a prejudiced and one-sided view of the case to the detriment of appellant's rights and dues.

After a careful consideration of all the circumstances connected with this suit, I have come to the conclusion that no doubt can be entertained as to the fabrication of the note of hand, and the vexatious intention of the plaintiff in suing under it. I do not lay any stress on the error in the date of the bond, because I regard it as a pure inadvertence on the part of the writer of the instrument, the amount of interest calculated manifestly showing that Kartick and not Phalagoon was the month originally intended to be inserted; nor do I consider as material the absence of documentary proof of demand. But I am clearly of opinion that there is abundant evidence that the appellant and respondent were on unfriendly terms at the period the debt is alleged to have been incurred, and that it is quite improbable to believe that under the circumstances the obligation could have been contracted at all, much less contracted without security and perfect indemnity. The evidence in this case is very conflicting, but, as I have above observed, it preponderates to the side of the defence. I see therefore no reason to interfere with the decision of the sudder ameen, and dismiss the appeal, awarding the costs of the suits in both courts against the appellant.

ZILLAH WEST BURDWAN.

PRESENT: HENRY C. HAMILTON, ESQ., JUDGE.

THE 6TH MAY 1850.

CASE NO. 267 OF 1848.

*Appeal from the decision of Baboo Mohunloll Pandeh, Moonsiff of
Burjorah, dated 7th 1848.*

Bakur Mundul, Plaintiff,

versus

Bissoo Dhoby, Haradhun Dhoby, and Luttoo Moollah, Defendants.

SUIT, to recover the amount of a loan and value of rice, laid at rupees 31-15-9.

Plaintiff states that defendants borrowed from him rupees 4, and were supplied with rice to the extent of 12 measures. They gave him a bond on the 13th Assar 1251 B. S., promising to repay every thing in Poos following, and pledging cattle, &c. Plaintiff was paid a portion of the rice by defendants on the 24th Poos 1251 B. S., and he now sues for the balance.

Bissoo and Haradhun, defendants, deny having given a bond jointly with Luttoo Moollah. A conversation passed on the subject, and it was agreed that defendants owed plaintiff rupees 4 and 12 measures of rice. They gave plaintiff a bond, but the rupees 4 were not advanced, and rice was delivered over to his (plaintiff's) son, Kyamuddeen, on the 24th Poos 1251 B. S., a receipt on the back thereof being written by Jeetoo Mirdah. Defendants urge they can prove all this, plaintiff has kept the receipted bond out of the way, and produced the forged one on which he sues.

On the 24th January 1848, the aforementioned two defendants, having amicably arranged their accounts with plaintiff, presented a petition to the moonsiff, agreeing to plaintiff's demand, and begging that Luttoo Moollah might be released: plaintiff at the same time acquiesced.

In the opinion of the moonsiff, plaintiff's witnesses and his bond do not agree, inasmuch as plaintiff stated, in his plaint, that the money and the rice had been given over to defendants, while the witnesses say the rupees 4 were paid at the time of the execution of the bond, and some portion of the rice only, the remainder having been *previously* rendered to them; hence, with reference to the Circular Order of the Sudder Dewanny Adawlut of the 25th

November 1847, No. 35, he could not trust plaintiff, or credit the arrangement he and the defendants had entered into, and he dismissed the case, with costs.

Plaintiff appeals, and very properly so, for there is no way of accounting how the court came to such a decision in the face of the parties having settled the case among themselves. The discrepancy noted is of no moment. The execution of the bond has been duly proved, and the rice and money were duly made over to defendants by plaintiff, whether all at once or a little previously is of no consequence. The moonsiff's argument is a mere quibble, and the Circular quoted by him, having been rescinded by Circular No. 2 of the 2nd February 1849, I remand the case to be re-tried on its merits. Appeal is decreed, and value of stamp paper is to be refunded in the usual way.

THE 6TH MAY 1850.

Case No. 264 of 1848.

Appeal from the decision of Baboo Mohunloll Pandeh, Moonsiff of Burjorah, dated 6th June 1848.

Nubbeenmohun Bonerjee, Plaintiff,

versus

Thakoordass Bhuttacharje and others and Doorgachurn Chatterjea,
Defendants.

SUIT, to recover a bond debt of rupees 25, principal, and 25, interest, Sicca rupees 50.

Plaintiff states that, after a settlement of accounts had been made between him and defendants, Thakoordass Bhuttacharje and Doorgachurn Bhuttacharje, two of the defendants, borrowed rupees 25 in cash, and with the balance of the old account, rupees 12-8, they gave him a kurrarnamah on the 25th Maugh 1242 B. S., agreeing to repay it in Assar 1243 B. S.; at the foot of the bond Doorgachurn agreed to pay rupees 12-8, and Thakoordass rupees 25; subsequently, it is alleged, Doorgachurn gave a separate kistbundy for his debt, of rupees 12-8, *plus* rupees 12-8 interest, including all other outstandings due to plaintiff, consequently his payment was noted on the back of the bond, dated 25th Maugh 1242 B. S., and he was released therefrom. Thakoordass has not paid his rupees 25, and plaintiff now sues for it with interest, rupees 25, total Sicca rupees 50, or Company's rupees 53-5-4.

Thakoordass (defendant) replies, that he has paid everything on the bond, dated 25th Maugh 1242 B. S. Plaintiff had charged compound interest, and made out a balance due to him of rupees 12-8, saying that he would lend him a further sum of rupees 12-8, and Doorgachurn rupees 12-8, making several parties witnesses

to the transaction. Plaintiff only gave him rupees 10, Doorgachurn received his rupees 12-8, and plaintiff promised to give him the remaining rupees 2-8, on some other day. In the month of Phalgun 1243 B. S., defendant states he paid plaintiff rupees 17, and requested him to write it off on the back of the bond, but it was not then forthcoming, and as witnesses had seen the payment no more was thought of it: plaintiff has not given him credit and brought this action.

In his jowaub-ool-jowaub, plaintiff repudiates the alleged payments, and urges that the witnesses named by defendant are all his dependents.

In his rudo-jowaub, defendant states that plaintiff has kept out of the way the real bond, and produced a forged one.

In the opinion of the moonsiff, plaintiff's two witnesses do not prove his case, he considers that this suit has been brought by buying over one of the parties to the bond, and for the sake of annoying the other, or Thakoordass, defendant; and as it is without foundation, he fines plaintiff in the sum of rupees 25 under Section 40, Regulation XXIII. 1814, and Construction No. 966, dismissing his case, with costs.

Plaintiff appealed, and orders for the suspension of the execution of the fine were issued by the judge on the 8th of July 1848.

In appeal, it is urged that the two defendants are brothers-in-law; that he (appellant) gave in a list of seven witnesses, two of whom appeared, and he applied for a second summons for the others. Defendant has agreed to the bond and produced no proofs, hence his (plaintiff's) one witness would and should have been sufficient.

JUDGMENT.

The moonsiff's proceedings are altogether irregular, and his decision extraordinary, to say the least of it. Defendants applied for a copy of the plaint on the 17th of March 1847, and named his vakeel on the 23rd, and as he did nothing in the matter the case proceeded *ex parte* on the 20th of April 1847, and plaintiff was called upon for his proofs; notwithstanding this defendant files his reply on the 4th of May, and his proofs were demanded on the 16th of June 1847. Having once admitted the suit *ex parte*, reasons for deviating from it should have been assigned, or the case should have been decreed *ex parte*. The moonsiff observes that plaintiff's witnesses cannot be depended upon: I cannot see this nor indeed has it been stated by defendants that he ever gave plaintiff a bond, nor has defendant ever produced any receipt for payment or tendered any proofs of it. On the other hand, plaintiff, on the 13th Poos 1254 B. S., stated that he would, if required, call his other witnesses; but he had no opportunity for so doing, and I do think the evidence of his two witnesses was quite sufficient under the circumstances to prove his case, and that the contradictions picked out by the moon-

siff were of no moment. Ordered, therefore, that this case be remanded for trial *de novo* with reference to the foregoing observations, the appeal be decreed, and the fine remitted. Value of stamp paper to be refunded in the usual way.

THE 7TH MAY 1850.

Case No. 255 of 1848.

Appeal from the decision of Moulvee Asudoollah, Moonsiff of Radhagore, dated the 31st May 1848.

Gopal Chund Mundle, Putnee Talookdar of lot Hurrynuggur,
Plaintiff,

versus

Kishen Paul, Gooroo Churn Paul, and others, Defendants.
The Burdwan Rajah and Rajah Cheit Singh, Objectors.

SUIT to recover the value of 500 saul trees at 2 annas each, which defendants cut and carried away, laid at rupees 62-8.

Plaintiff states he is the putneedar of lot Hurrynuggur, in which lies mouzah Rungshyer; and around the tank by that name and on all sides of it are his saul jungle trees; defendants during the month of Maugh 1252 B. S., cut and carried off, *vi et armis*, 500 of his trees: plaintiff consequently sues for their value.

Gooroo Churn Paul, defendant, replies that lot Hurrynuggur belonged to Nerain Mundle, and, on his death, it descended to his two sons, Kishen Pershaud Mundle and Kartick Mundle, as well as to plaintiff, who is the elder brother of Nerain Mundle; until therefore they all join in this action it cannot stand. The Maha Ranee (since deceased) of Burdwan too, being the zemindar of the jungle mehals, should have been made a party, as the jungle at issue belongs to her. And in the putnee leases the Maha Ranee's right to the jungle is excluded, as will appear by looking at the byenamah. Defendant denies having cut plaintiff's jungle. The servants of the Ranee cut down several trees belonging to the Maha Ranee for building up their houses, &c., his (defendant's) brother is her gomashtha, and as there was a quarrel between him and plaintiff, the latter has brought this case falsely against him.

Kishen Paul, defendant, replies to the same purpose.

The late Maha Ranee of Burdwan, one of the claimants, supports the defendants, says she purchased the jungle mehals, and has been in possession since 1205 B. S., and as the putneedars only purchased their putnee in 1213 B. S., they cannot have any right to the jungle in dispute; the entire mouzah by name Rungshyer is not settled with plaintiff, only a portion called the arazec mouzah, which is formed,

out of the various description of service and other lands, were resumed by former zemindars. Plaintiff has no right to the jungle appertaining to mouzah Rungshyer, and only to the arazee mehal.

In his jowaub-ool-jowaub, plaintiff states he can prove that he is the talookdar of lot Hurrynuggur, and that mouzah Rungshyer belongs to it; it is necessary to enquire who looked after the trees which were cut and carried away by defendants; this he has done, and the Maha Ranee can come down and claim all the jungles included in putnee tenures, and say they belong to her jungle mehal.

Rajah Cheit Singh claims the jungle of mouzah Rungshyer as the well-known shekargah of his ancestors. Plaintiff has received a pottah for the same, and takes care of it. When the timber is cut down and sold, 10 annas go to the plaintiff as the keeper, and 6 annas to him (the rajah.) He can prove this by fysalah, No. 1554, and by plaintiff's kubooleuts, &c. Plaintiff has connived with defendants and the Maha Ranee and brought this action.

The moonsiff states he went in person and enquired into the matter in dispute. He considers plaintiff's case good, and that of the defendants and the two claimants bad. Although the two Pauls, defendants, tendered the evidence of three witnesses, and several individuals supported them on the spot, still on looking at the villages and jungles it appeared that there were jungles close to where defendants' witnesses lived, and it was not clear why they should go to a distance to cut their jungle and wood, whilst it was procurable close at hand, and these witnesses too were non-residents, and the moonsiff could not trust to their testimony. Again, by the plaintiff's fifty-one witnesses on the spot and the evidence of four taken in the court, all of them living near the spot in dispute, it was proved that the jungle at issue belonged to lot Hurrynuggur, the putnee talook of the plaintiff, and that he looked after and preserved it: further, the moonsiff drew up a map and examined the country in the presence of both parties, and the cutting and carrying away by force of plaintiff's timber were established. By referring to fysalah, No. 1108, filed by plaintiff, lot Hurrynuggur is plaintiff's putnee, and his possession is clear by the petition presented by the Maha Ranee. The Maha Ranee never filed any proof that the jungle at issue belonged to her jungle mehal property, nor, on her death, has the Maha Rajah done so, whereas by fysalah, No. 1108, it is clear that the land of mouzah Rungshyer belonged to plaintiff, notwithstanding Oorjun Roy, (in a case in which Gopal Holdar was defendant) talookdar of jungle mehal lot Ghat Bharah, laid claim to it. Rajah Cheit Singh's claim is absurd, because by a fysalah, No. 1579, dated 25th June 1839, filed by plaintiff, it is clear that his ancestor, in reply to a suit, No. 1396, stated that mouzah Rungshyer pertained to the *mal* of lot Hurrynuggur, and had the rajah any title he should have brought it forward after the decree, No. 3386, dated the 21st June 1817, was issued. It having been proved, therefore, that plaintiff

was in possession of the jungle land in dispute, that he looked after and took care of the trees, and that defendants did by force cut and remove 500 trees, which belonged to his putnee property; the court decreed the amount of their value as demanded against defendants, and overruled the claims of the Burdwan Rajah as well as of Rajah Cheit Singh.

The Maha Rajah of Burdwan appeals. He urges that plaintiff's witnesses are all his dependents, and they do not state that the talookdar of Hurrynuggur ever received any revenue from the trees or the jungle, and no kubooleuts have been filed by plaintiff in proof thereof, while his (appellant's) gomashta has proved satisfactorily that the disputed jungle belongs to his jungle mehal lot Ghat Bharah, the jungle having been cut by and the rent paid to him (appellant.) The jungle near his (appellant's) witnesses' villages is jhurree, jungle not fit for burning, consequently they have been in the habit of going to cut the jungle on the disputed land. His gomashta was ready to file kubooleuts, &c., in proof of his (appellant's) right thereto, and some of plaintiff's witnesses in a way bear him (appellant) out. Fysalah No. 1108 cannot affect him (appellant.) Lot Hurrynuggur is written in his serishta and byenamah, and by calling for the latter, the point at issue will be cleared up. The disputed jungle is not rakha jungle, appertaining to lot Hurrynuggur, but belongs to Ghat Bharah, and the court should not have decided this case without examining and calling for the lawazima papers. The fact is, during the period of khass management by Government in 1210 B. S., in mehal Barah, in the jumma-wassilbaquee papers of hoodah Barah, mouzah Rungshyer is entered with a ryotwaree jumma of rupees 14-13-7-1, and an area of beegahs 25-2, subsequently when pergunnahs Bishenpoor, &c., were sold in 1213 B. S., the Burdwan Rajah, appellant's ancestor, purchased them, and in 1214 B. S. the said area of land, as belonging to mouzah Rungshyer, was settled in putnee with lot Hurrynuggur, and only this quantity belongs to that lot; hence if only beegahs 25-2 were included the putnee billee bundee, or settlement, how can plaintiff lay claim to a vast extent of jungle in virtue of his putnee byenamah?

Appellant urges that though the moonsiff did not call for them he sent these jumma-wassilbaquee papers to the court, and he cannot understand why they were not received from his gomashta. Again, in the bund sale papers of 1218 B. S., dated the 21st Sawun, it will appear that the term arazee is written in referring to mouzah Rungshyer, but the moonsiff has not alluded to it; finally, the moonsiff has not given any boundaries and the term laggao is too indefinite.

Gooroochurn Paul and Kishen Paul side with this appellant.

Musst. Dosseemunee, calling herself the heir of Gour Mundle, petitions by vakeel to the effect that the name of Gour Mundle and Nerain Mundle are still current, and plaintiff has brought this action

in his own name, obtaining a decree without her being alluded to. Gopal Mundle plaintiff is not the sole talookdar of lot Hurrynuggur, and Nerain Mundle's two sons are still living, and he had no right to bring this action single-handed.

This case with others of a similar nature have been heard and argued on various dates, and I proceed to pass judgment upon this one separately.

JUDGMENT.

This suit is not one for *possession*, but only for the value of 500 saul trees, which defendants wrongfully cut down and carried off. It has been clearly and satisfactorily established that the jungle in dispute has been reared and preserved by plaintiff as a part and portion of his putnee lot Hurrynuggur, and appertaining to mouzah Rungshyer, and it is without doubt in his (plaintiff's) occupancy, hence the decree of the lower court is perfectly correct; but it does not, as it should not, give any title to the plaintiff, or set aside any claim which the Rajah of Burdwan may have to the disputed land as appertaining to his lot Ghat Bharah, and alleged to be excluded from plaintiff's putnee lot Hurrynuggur. This is a matter which can only be settled by the rajah bringing a separate action against the talookdar plaintiff, for the recovery and possession of the disputed jungle as towfeer, and in excess of the area included in his putnee settlement. I do not consider the lower court was at all called upon to enter further into the claim, which was advanced by the rajah, and in support of which he has filed in this court various papers of 1210 B. S., to show that the area of mouzah Rungshyer is only beegahs 25-2, with a jumma of rupees 14-13-7-1, and I am of opinion that the rajah had ample opportunities afforded him while this case was pending to file any proofs or other documents. The claim of Rajah Cheit Singh is perfectly groundless, and the petition filed by Musst. Dosseemunee, while this case has been pending in appeal, cannot be attended to, but the petitioner can, if she pleases, bring any separate action against any person who may have injured her.

• Ordered, therefore, that the decree of the lower court be confirmed, and the appeal rejected.

THE 7TH MAY 1850.

Case No. 261 of 1848.

Appeal from the decision of Moulvee Asudoollah, Moonsiff of Chowkee Radhanagore, dated the 31st May 1848.

THE parties in this suit are the same as in suit No. 255 just now decided, the appellants are Gooroochurn Paul and Kishen Paul defendants. They support the Burdwan Rajah and endeavour to make out that the disputed jungle belongs to the jungle mehal property, lot Ghat Bharah, and that they have paid revenue therefrom

to the talookdar of the said lot. They urge that plaintiff's witnesses are entirely his dependents; that this case has been brought about through enmity with the intention of ruining defendants, and they have always cut the jungle when they wanted it, and unless the jungle continues to be theirs, it will be impossible for them to pay their rents, &c.

JUDGMENT.

The forcible cutting and wrongfully carrying off of plaintiff's trees having been clearly proved against these defendants (appellants,) they must stand the consequences. For reasons therefore given in my separate appeal decree, No. 256, of this date, I uphold the decision of the lower court, and reject the appeal; costs to fall on appellant.

THE 7TH MAY 1850.

Case No. 77 of 1850.

Appeal from the decision of Kazeo Hamid Ally, Moonsiff of Sonamookhee, dated the 20th March 1850.

Gunganerain Roy, Plaintiff,

versus

Gopal Ghose Ryot and others, and Ramtunnoo Roy, Oozurdar, Appellants.

PLAINTIFF sues for arrears of rent due from defendant Gopal, on account of 7 annas kist of 1256 B. S., laid at rupees 14-8.

Defendant admits the jumma to be correct, but says he had not paid it owing to there being disputes.

Ramtunnoo Roy claims as durputneedar.

The moonsiff decrees the case for the same reasons as those assigned in appeal No. 75, just now decided, and adds that he cannot believe claimant's witnesses, because they live not in the village and are his dependents: further, he remarked, that Bhoyrub Shoor, defendant, was present by vakeel, but offered no objections.

My decision in appeal No. 75 must govern me in this decree, but I find in addition that plaintiff never, though he was called upon for it, filed any proof of his being actually in possession of the disputed village, and consequently in a position to sue the ryots. This is to say the least of it unfortunate, and when it is coupled with the facts which are apparent that disputes about the durputnee do exist, and that the ryots have declined to pay their rents to any one in consequence, Ramtunnoo Roy, appellant, holding duly registered deeds of purchase of the durputnee from plaintiff Gunganerain, plaintiff's case becomes most suspicious. No jumma-wassil-baquee accounts have been filed. No kuboolent tendered by plaintiff to show that the ryot defendant is plaintiff's ryot, or any proof that in the preceding year, 1255 B. S., plaintiff was in actual possession, and

received the rents from the several ryots. With reference to the foregoing, as well as my observations in appeal No. 75 of 1850, just now decided, I decree the appeal, and remand the case to be tried *de novo*. Value of stamp paper to be refunded in the usual way.

THE 7TH MAY 1850.

Case No. 75 of 1850.

Appeal from the decision of Kazei Hamid Ally, Moonsiff of Sonamookhee, dated the 19th March 1850.

Gunganerain Roy, Putneedar of lot Dhee Durioapoor, Plaintiff,

versus

Sheeboo Ghose, Ryot, Bhoirub Shoor, discharged Gomashita, and Muttooranath Roy, Defendants.

Oozurdar, Ramtunnoo Roy, Durputnee Talookdar of lot Dhee Durioapoor, Appellant.

Gunganerain Roy, for himself and his ryot, Sheeboo Ghose, Respondent.

SUIT, for the recovery of arrears of rent due from Sheeboo Ghose ryot, for the seven (7) annas kist of 1256 B. S., on account of mouzah Nij Durioapoor, laid at rupees 21-13, principal, and 15 annas 6 pie interest, total rupees 22-12-6.

Plaintiff states that he was the purchaser of the putnee lot Durioapoor in his servant (Muttooranath Roy's) name, his own name was current in the mofussil, and he was in possession. Sheeboo defendant holds land with a jumma of rupees 49-13-18 per annum, and not having paid his 7 annas kist in 1256 B. S., he sues him for it. Plaintiff also makes the discharged gomashita, one of the defendants, lest he should offer any objections hereafter.

Sheeboo Ghose, defendant, replies, acknowledging the jumma to be correct: he urges that he has, on several occasions, paid rupees 13, and obtained his dakhilas: and on the 8th Bhadon Ramtunnoo Roy having come forward as the durputneedar, and as there was a dispute, he (defendant) would not pay any more. Plaintiff has omitted to deduct all these payments.

Ramtunnoo Roy, oozurdar, pleads that plaintiff cannot sue the ryot and the gomashita together on stamp paper of a quarter value: he bought the durputnee, at a jumma of rupees 615 per annum, for rupees 750 from Gunganerain Roy, plaintiff, on the 21st Bysack 1256 B. S., he gave him a kistbundy and kuboolent, and received a byenamah from Gunganerain Roy, plaintiff, as well as a receipt.

The kubooleut and byenamah have been duly registered in the office of the register of deeds, and he (oozurdar) obtained possession. Plaintiff has now got over several of the ryots, and brought forward this case falsely against him.

In his jowaub-ool-jowaub, plaintiff admits the payments of rent as stated by the ryot defendant: denies having given the durputnee to Ramtunoo Roy, and states that Mr. Erskine and his karpurdauz, to ruin him (plaintiff,) have brought forward a pauper oozurdar, and have filed a forged and fabricated kubooleut and byenamah, registering the documents through the medium of a nominal mooktear. He adds that, previous to the date of the alleged registry, he (plaintiff) mortgaged this lot with other property to one Govind Chunder, as per deed registered on the 26th of Bysack 1256 B. S. He has a regular attorney, and, notwithstanding it, the registry of the documents was effected by a stranger. He has realised some of the rents through his gomashta, Bhoyrub Soor defendant, and, having discharged him, he has appointed another gomashta, who is collecting for him: some pay up, and others will not do so, and it is not irregular his having sued the ryot and the gomashta together.

None of the other defendants appeared.

The moonsiff, after perusing a copy of the sale ameen's urzee, and the kyfeut of the mohurir of the summary suit department, and taking the evidence of two witnesses, states that it appears plaintiff, after having settled with his ryots at the poonya, was in possession, and although Ramtunoo Roy oozurdar urges that he holds the durputnee from plaintiff, still he was unable to produce his witnesses. Hence, with reference to the said documents, and to the reply of Sheeboo Ghose defendant, he considers plaintiff has proved his balance, and he decrees it less the rupees 13 paid by defendant: costs to fall on defendants and the oozurdar's claim rejected.

Ramtunoo Roy, oozurdar, appeals, urging that this is a suit to obtain a right and title, and not one which can be tried summarily. Plaintiff should have sued to have his (appellant's) durputnee cancelled. This is not a revenue suit cognizable under Section 8, Regulation VIII. 1831, on stamp paper of quarter value, and as the moonsiff's roobakaree of the 7th February 1850 was not a definite order, he (appellant) could not appeal summarily therefrom. Plaintiff's witnesses are his dependents. Every one knows, he (appellant) is the durputneedar and in actual possession, his kubooleut and byenamah should have been examined, and as his (appellant's) witnesses in suit No. 181, were his witnesses in this suit, appellant prays that the two cases may be heard together.

In consequence of there being a sessions appeal case under Act IV. 1840, pending before the sessions judge mainly depending on this decree, a request was received that it might be taken out of turn and heard: accordingly it was heard on the 2nd instant, and concluded this day.

JUDGMENT.

The moonsiff's proceedings are irregular:—first, he should have disposed of, without proceeding further in the case, the plea of the oozurdar appellant, that plaintiff could not bring this action against a ryot and the gomashita for arrears due from the former, under the stamp rules laid down in Section 8, Regulation VIII. 1831. His proceeding of the 7th of February 1850, contains no definite order, consequently it was not appealable summarily; secondly, the existence of the arrear due from defendants should have been proved by plaintiff, and the court should have taken into its consideration the fact of plaintiff having sued for arrears two-thirds of which he had in reality received, thereby proving that his (plaintiff's) case, if not suspicious, was certainly incorrectly laid. Plaintiff's witnesses do not strictly prove his possession, on the contrary, judging from their evidence and the papers of the case, it is evident that this is a dispute between plaintiff as putneedar, and Ramtunnoo Roy appellant as durputneedar, a point which can only be settled in the civil court, and I question much whether plaintiff was authorized to bring this action for arrears on quarter value stamp paper, and thereby indirectly to wish to obtain possession of an estate, which by duly registered deeds and documents he had given out, for a heavy consideration, on a durputnee lease to appellant. Plaintiff's object in making Bhoyrub Soor a defendant, was evidently to prevent his becoming a witness for the oozurdar, as with him must have been, in his capacity of gomashita, the mofussil accounts; and as there appeared to be a good deal of doubt as to whether the plaintiff was really in occupancy, the lower court, having once admitted the case, should have deputed an ameen to enquire into the matter. With reference to the foregoing observations, I remand the case to be tried *de novo* and according to law. The appeal is decreed, and the value of the stamp paper to be refunded in the usual way.

THE 8TH MAY 1850.*

Case No. 256 of 1848. •

Appeal from the decision of Moulvee Asudollah, Moonsiff of Radhanagore, dated the 31st May 1848.*

Musst. Beelasee, widow of Bhowance Paul, deceased, Kishen Paul and Nuffer Paul, Plaintiffs,

versus

The Maha Ranee of Burdwan, and on her demise, the Maha Rajah and their servants, Gopal Mundle, Talookdar of Lot Hurrynuggur, and others, Defendants.

SUIT, for the cancelment of a kuboolcut, dated the 11th Jyete 1254 B. S., with a jumma of rupees 9-4-5-1, which the ser-

vants of the Burdwan Rance took from plaintiffs against their will.

Plaintiffs state that they hold 15 beegahs of land, with a jumma of Sicca rupees 8-11, belonging to Bhowree Paul, in mouzah Bugarah, appertaining to lot Hurrynuggur, the putnee talook of Gopal Mundle, whom they have made a nominal defendant during Bhowree Paul's lifetime, and since his decease they (plaintiffs) have all along been in occupancy, paying their revenue to the talookdar. In 1253 B. S., plaintiffs cultivated 3 beegahs, but Kishen Paul and others, defendants, cut and carried off the crops, and in consequence an action, No. 68, was brought, and it is still pending. On the 11th of Jyte 1254 B. S., the defendants, being the servants of the Ranee of Burdwan, seized and took away Kishen Paul, one of the plaintiffs, to their cutcherry, and, in the evening, under the plea that the 3 beegahs belonged to their jungle mehals, demanded a kubooleut. Kishen Paul, plaintiff, denied that the land pertained to defendant, the Ranee; but notwithstanding he was made to sign a kubooleut at 8 P. M., on the above date, after having been kept under guard by the nugdees, for land, with a jumma of Sicca rupees 8-11, or Company's rupees 9-4-5½. Plaintiffs therefore sue for the cancelment of this ikrar, or kubooleut.

The Maha Rance, defendant, replies that plaintiffs' statement is all false: her servants never took a kubooleut, as alleged, from plaintiffs against their will, and the case has been got up in collusion with Gopal Mundle, the talookdar of lot Hurrynuggur; she admits that she has lost 15 beegahs of land by a decree of court; but that the land in dispute, by referring to the boundaries, will be found to be quite distinct from the 9 beegahs for which Kishen Paul of his own free will gave a kubooleut to her naib gomashta, and Kishen Paul originally held this land as a junglebooree tenure.

Kishen Paul defendant supports the Maha Ranee, and urges that Nerain Mundle is the recorded talookdar; and his heirs, being in existence, ought to have been made parties to this suit.

Gopal Mundle, defendant, supports plaintiffs.

In the opinion of the moonsiff, the witnesses of the ranee (now rajah) cannot be trusted, they reside in distant villages, and though they certify that the kubooleut was given by plaintiffs of their own accord, he does not believe them; further, the rajah has not been able to show from what date the alleged junglebooree land was given to plaintiff, nor, had he held such a tenure, is it likely that plaintiff would have given a kubooleut for it? hence, as it has been proved that plaintiff does not hold any land appertaining to the ranee's jungle mehals, and as it has been established that plaintiff was compelled to execute the kubooleut, the moonsiff decrees the case in plaintiff's favor, cancelling the said kubooleut.

The rajah appeals, and to the same purport as in case No. 239, decided by this court on the 12th April 1850.

* Respondent Gopal Mundle appeared without summons.

There being several cases of this description, they have now been taken up together, and I proceed to record my judgment on each separately.

JUDGMENT.

Plaintiffs have filed dakhilas showing that they have regularly paid their rent to the talookdar of lot Hurrynuggur from 1245 to 1253 B. S. inclusive, from the land in dispute, and had they held it, as alleged, as a junglebooree tenure, the rajah would surely have produced their kubooleut, for it is not likely that plaintiffs would have given a fresh kuboolcut without some mention of previous possession being made therein. There is no proof that the ranee or rajah ever received any rent from the disputed land in virtue of their rights as talookdar of the jungle mehals; and as plaintiffs' possession has been clearly proved, and the fact of the kuboolcut having been taken from Kishen Paul, plaintiff, against his will and by compulsion, I see no reason for disturbing the decree of the lower court, and hereby confirm it, rejecting the appeal.

THE 8TH MAY 1850.

Case No. 269 of 1848.

Appeal from the decision of Moulvee Asudoolah, Moonsiff of Radhanagore, dated 14th June 1848.

Bhyrub Dutt, Plaintiff,

versus

The Burdwan Rajah, Gopal Mundle, and others, Defendants.

SUIT to cancel a kuboolcut with a jumma of rupees 2, dated the 15th Jyete 1254 B. S., which was taken from plaintiff against his will by the servants of the Burdwan Rajah.

Plaintiff states that there are 3 beegahs of land in mouzah nij Hurrynuggur, appertaining to lot Hurrynuggur, called Hurreektolah, the jumma payable thereupon being rupees 2 to the talookdar and 8 annas to the lakhirajdar, also in the same place 7 cottahs and 2 cowries, bearing an annual rent to the talookdar of 8 annas, and another parcel of 15 cottahs belonging to the lakhirajdar, altogether beegahs 4-2-2, with a rent of rupees 3 per annum. Gopal Kamar held possession as a jumme ryot, and regularly paid his rents to the talookdar. On the 13th Jyete 1253 B. S., the said Gopal sold his rights to plaintiff for rupees 41, and since then he (plaintiff) has been in occupancy; he holds no land appertaining to the jungle mehals, and he was seized and taken away by the ranee's servants and compelled to execute the kuboolcut for the cancelment of which he now brings this action.

The Maha Ranee replies that there was a parcel of 15 beegahs of junglebooree land belonging to Mohun Paul and Bungssee Kamar,

who received a pottah for it in 1213 B. S. from the Maha Ranees' kutkeenadars. This was in due course cleared and cultivated, and her (ranees') naib gomashtha demanded rent from the heirs of Bungshee, which plaintiff having heard of, of his own free will came forward and executed an ikrar kubooleut, calling it 4 beegahs, the land of the heirs of Bungshee, from whom the plaintiff stated he had purchased it, &c.

In the opinion of the moonsiff plaintiff has proved that he was compelled against his will to execute the kubooleut at issue, and although the rajah was called upon for his proofs he never tendered any nor could his vakeels produce them, he consequently decreed the case in plaintiff's favor, and cancelled the kubooleut.

The rajah appeals, and the only thing he has not previously advanced in his other cases is, that his vakeel, or he had his proofs and documents ready, but the moonsiff was too expeditious, and decided the case without his being enabled to file them.

JUDGMENT.

My decisions, Nos. 239 and 256, are sufficient for this case, and are in every way applicable, and with reference to the objection of the rajah that he had not sufficient time allowed him to file his proofs I learn that it is a mistake. On the 27th May 1848, defendants were allowed seven days to file their proofs; on the 31st May 1848 the vakeels' attention was called to the previous order; on the 5th of June 1848, five extra days were granted; and on the 14th of June, as the vakeels could not produce them, the case was taken up and decided. Being of opinion that the decision of the lower court is correct, I hereby confirm it, rejecting the appeal.

THE 8TH MAY 1850.

Case No. 257 of 1848.

Appeal from the decision of Moulvee Asudoollah, Moonsiff of Radhanagore, dated the 27th May 1848.

• Seetul Ghose, Plaintiff,

versus

• The Maha Ranees, and on her demise, the Maha Rajah of Burdwan and others, Defendants.

SUIT, to cancel a kubooleut, dated 27th Jyete 1254 B. S., with a jumma of rupees 8 on 18 beegahs of land, which, it is alleged, the servants of the rajah by force compelled plaintiff to execute.

Plaintiff states that there are 21 beegahs 12 cottahs of land, with a jumma of rupees 14-9-17, belonging to Panchanun Ghose, deceased, in mouzah Salookah, appertaining to lot Hurrinuggur, and this land for many years has been in his (plaintiff's) possession, on behalf of the heirs, and he has regularly paid his rents to Gopal Mundic,

talookdar of lot Hurrnuggur, receiving his dakhilas. During the year 1254 B. S. the land was well cultivated, and on the 27th of Jyte the rajah's servants sent and had him (plaintiff) seized, and brought to the cutcherry, where he was detained and compelled, against his will, to execute a kubooleut: he consequently now sues to have it cancelled.

The rance of Burdwan replies that the land for which the kubooleut was given belonged to her jungle mehals, lot Ghat Bharah, and that plaintiff had of his own free will executed it.

The moonsiff's opinion in this case is similar to that recorded in appeal No. 238 of 1848.

The rajah of Burdwan appeals, advancing the same grounds for so doing as are set forth in his other cases of this description.

Respondent appears without summons.

JUDGMENT.

It having been satisfactorily established that the kubooleut was given through compulsion, and that the land in dispute is in the possession of plaintiff as appertaining to lot Hurrnuggur, my decision in cases No. 239, dated the 12th of April last, and No. 256, this day disposed of, must govern me in this case. Ordered, therefore, that the decree be confirmed, and the appeal rejected.

THE 11TH MAY 1850.

Case No. 272 of 1848.

Appeal from the decision of Moulvee Asudoollah, Moonsiff of Radhanagore, dated the 8th June 1848.

Bhagbut Khan, (Plaintiff,)

versus

Neemye Lohar and others, (Defendants.)

SUIT, to recover the value of rice, straw, &c., illegally attached under Regulation V. 1812, to obtain the reversal of the sale, with rent for 1254 B. S., laid at rupees 46-11.

Plaintiff states that there are 8 beegahs of lakhiraj rice land belonging to Ramlochun Banerjea, situated in mouzah Mityalah Khatkadangah Maut, Neemye Lohar being the jotedar or ryot. One Nubbeen Khawas dispossessed him, and the ghutwals of Beersingah also interfered with him, he could not pay his rent, and Ramlochun sued him, and, obtaining a decree, No. 910, took out execution and sold his property: Neemye became an insolvent, and resigned his land to Ramlochun, whereupon the said Ramlochun made over to him (plaintiff) the land, 8 beegahs, on a jumma in perpetuity of Sicca rupees 8 per annum, by a pottah, dated the 14th Jyte 1249 B. S. Plaintiff, obtaining possession, wished to

underlet the land, and a discussion passed between him and Neemye Lohar defendant, which ended in plaintiff giving Neemye the land at a sajah jumma. Neemye executed a kubooleut, dated the 19th Jyte 1249 B. S., and paid his rents for 1249 to 1251 B. S., inclusive: during the two following years he paid no rent, and plaintiff told his son to sue defendant Neemye for the arrears of 1252, and to distrain his crops for 1253 B. S. Instead, however, of his son Gopeenath doing so, he went and attached the crops for a balance of rupees 30, on which Neemye deposited rupees 31-12, and brought a suit No. 52, for the reversal of the distraint before the revenue authorities, and an *ex parte* decree was given in his (Neemye's) favor, the distraint being declared to be irregular. Plaintiff states he was not in this part of the country, and his son Gopeenath never defended the summary suit: he now sues for the reversal of the decree of the deputy collector, dated 30th January 1847, thus:

	Rs.	As.
Value of rice, on account of the two years 1252, and 1253 B. S., according to defendant's kubooleut,	30	0
Ditto for 1254 B. S.,.....	12	7
Three years' straw,	1	8
Costs in Regulation V. 1812 suit,.....	2	12
Total, ...	46	11

Neemye defendant replies that plaintiff and Gopeenath defendant are father and son. Gopeenath was the distrainer and not plaintiff. The distraint proving illegal, he (Neemye) obtained a decree, hence Gopeenath should have brought this action and not plaintiff. He adds, that plaintiff and Ramlochn Banerjea, lakhirajdar, have leagued in order to fix the jumma; for years past up to 1249 B. S., he (defendant) was the ryot; and, as will be seen by fysalah No. 910, his jumma was at the rate of 5 measures of rice; that the excess now demanded is quite out of the question. Plaintiff has not stated that he (defendant) was the sajah ryot of Ramlochn Banerjea. He states he never resigned, or gave up the lands on becoming an insolvent; and had he done so it is not likely he would again take them at almost double the old amount of jumma besides straw. The malik is entitled to his 5 measures of rice and no more. Plaintiff through his son illegally distrained his crops, calculating the rent at 14 measures, he (defendant) objected, the son appeared in the deputy collector's office, but was unable to produce any proof of the rate being fixed at 14 measures; consequently, he (defendant) obtained a decree. He adds that he has paid his rent agreeably to the rate specified in fysalah No. 910, to the plaintiff, up to 1253 B. S., in conformity with the malik's wish. The suit for 1252 B. S. is altogether false, and had there been any truth in it some mention thereof would have been made in the distraint case.

In the opinion of the moonsiff, defendant has not proved that he has paid his rents since the date of fysalah No. 910, up to 1253

B. S., at the rate of only 5 measures: further Neemye defendant has stated, in his petition of objections filed in the distraint case, that plaintiff had taken the land at a fixed jumma from the malik, Ramlochun Banerjea, hence, if Neemye had not resigned, how could this pottah have been given to plaintiff? Again, if plaintiff is to give a jumma of 8 Sicca rupees per annum to malik, how can he bear a dead loss and only receive 5 measures of rice from Neemye defendant? Plaintiff having proved the kubooleut executed by defendant, the moonsiff decrees the amount claimed against him, reversing the decision of the deputy collector, dated the 30th January 1847.

Neemye Lohar, defendant, appeals, urging that father and son cannot be made plaintiff and defendant in this way: fysalah No. 910 fixes the rent at the rate of 5, while the demand now is considerably in excess, or 7 measures of rice, besides straw: the kubooleut is a forgery, and cannot upset the rate fixed in fysalah No. 910: that his (appellant's) alleged esteefah has not been filed by plaintiff, or the lakhirajdar, and having once broken down, when his rent was only 5, it is not probable he would again agree to pay at the rate of 7 measures of rice, &c.

JUDGMENT.

The moonsiff has not gone into the distraint case at all, or he never could have reversed the decision of the revenue authorities: he has entirely overlooked the fact that the rent demanded by that suit was fixed at the rate of 14 measures of rice without any demand for straw, *for one year*, whereas by the kubooleut stated to have been given to plaintiff by defendant the rent is fixed at only 7 measures of rice and 8 puns of straw per annum, this of itself ought to have been sufficient. Again, plaintiff must be held to be responsible for any mistakes or blundering of his son, Gopeenath defendant, and the actual distrainer is the one to whom he must look, and who was the proper person to have brought this action. Taking the above into consideration, and finding that defendant has not had an opportunity of proving his case, I have no alternative but to remand this suit for trial *de novo* to the lower court. Ordered, therefore, that the appeal be decreed, and the case remanded. Value of stamp paper to be refunded in the usual way.

THE 11TH MAY 1850.

Case No. 273 of 1848.

Appeal from the decision of Moulree Asudoollah, Moonsiff of Radhanagore, dated the 14th June 1848.

Khettoo Mudduck, Plaintiff,

versus

Khettoo Sheikh and the heirs of Khoshal Sheikh and others,
Defendants.

Khyroo Sheikh and others, Oozurdars.

SUIT, for the recovery of rupees 71, principal, and rupees 65-6-10, interest, total, rupees 145-8-1, due on a kistbundee, dated 12th Bysack 1242 B. S.

Plaintiff states that an adjustment of accounts was made between him and defendants, and a balance rupees 71 having been found to be due to him, Khoshal Sheikh, Decanut Sheikh, and Khettoo gave him a joint bond on the date specified above, promising to repay him at the rate of rupees 10 per annum from 1242 to 1247 B. S., and 11 rupees in the last year. They pledged 18 beegahs 10 cottahs of land in mouzah Jamkoondée, turf Talsagrah; and as nothing has been paid, plaintiff sues for the amount.

Decanut and Khoshal, defendants, reply, deny the demand *in toto*, and, repudiating the bond, state that they sold their 16 beegahs of land in the mouzah at issue, on the 25th Assar 1254 B. S., to the claimant.

Khettoo defendant replies that plaintiff's case is utterly false, he never had any concern with the two other defendants, and never gave him a joint bond. He had a separate karbar with plaintiff, which has been squared and the bonds returned, he has no interest in the land, said to have been pledged to plaintiff, and had he borrowed money or given him a bond, he would have mortgaged his own 5 annas and 7 gundahs share, he can read and write, and other defendants would never pledge their property for his debts.

The claimants, three in number, residing at mouzah Jamkoondée, and Khoshal Sheikh of Burroojpottah, state that defendants Decanut and Khoshal sold to them by a bond, dated the 25th Assar 1254 B. S., which has been duly registered, their land in mouzah Jamkoondée, turf Talsagrah, ghattee Mohun Maut, this said property was formerly pledged to them, claimants, for a debt of 99 rupees, and since their purchase they have been in possession, and paid their rents to the talookdar, they hold their proofs, and request a local enquiry may be instituted.

In his jowaub-ool-jowaub, plaintiff says the defendants and claimants are connections, and this is a trick between themselves to get free from his (plaintiff's) debt. Khettoo defendant cannot write,

and the three defendants are cousins. Khettoo defendant's pleas are all false, and this defendant had dealings with plaintiff's brother.

The moonsiff is of opinion that plaintiff has satisfactorily proved his bond and debt, and although the claimants have filed their kuballa, pottah, and revenue dakhilas, still, as this is a suit for debt, it is not necessary to enter into their claims; he consequently decreed the amount as against Khettoo Sheikh defendant personally, and the property of the two other deceased defendants.

Khettoo defendant appeals, he is not a cousin of the other defendants, he can write as the moonsiff could have proved, he has been for years employed in the Jamkoondee factory, where his signatures are numerous, his objections have not been enquired into, and he never pledged any property to plaintiff as alleged, &c.

JUDGMENT.

This case has been most superficially decided. The defendants' and claimants' pleas should have been gone into, Khettoo defendant's writing examined, and the bond itself more carefully scrutinized. I consider plaintiff's case is most suspicious *prima facie*. He has kept his bond quietly by him for twelve years, less two or three months, and notwithstanding landed property was pledged to him, as alleged, and ten years' kists, agreeably to the conditions entered in the bond, had become overdue, he never sued upon it until he found out that the property said to have been pledged to him had been sold to others, and paper for the engrossing of the deed of sale had been purchased. The bond in claimants' favor was executed on the 25th Assar 1254, and this suit was instituted on the 6th Bhaadon 1254, or just six weeks subsequently. The bond was registered unopposed on the 28th August 1847, or seven days after this case was brought. There being so much doubt about possession, and whether any karbar existed between plaintiff and defendants, a local enquiry should have been made to clear up the former, and plaintiff's khattas should have been called for to establish the latter. Under the above circumstances I cannot uphold the decree of the lower court, but decree the appeal, and remand the case for trial *de novo*. Value of stamp paper to be refunded in the usual way.

THE 17TH MAY 1850.

Case No. 276 of 1848.

Appeal from the decision of Baboo Bissessur Chuckerbutty, Moonsiff of West Burdwan, dated the 24th June 1848.

Kistomohun Bhooee, Putnee Talookdar of lot Ekariah, (Plaintiff,)

versus

(1) Lukhun Paul, present Ryot, (2) Kannaram Tewary, Talookdar of lot Shahibgunge, (3) Khettromohun Mitter, the old ryot, and others, (Defendants.)

SUIT, for the recovery of arrears of rent on account of 1252 and 1253 B. S., laid at rupees 63-13-5.

This case was instituted in the Oundah moonsiff's court, and transferred to this chowkee.

Plaintiff states that defendant Khettromohun Mitter held land, bearing a jumma of Company's rupees 41-15, in mouzah Ekariah, and his rights having been sold in execution of a decree were purchased by Lukhun and Kannaram defendants, who obtained possession. Plaintiff received his 10 annas rent for 1252 B. S. by distraining the crops; and for the remainder of that year's rent as well as for 4 annas of 1253 B. S., plaintiff brought an action, No. 314, in the civil court; for the other 12 annas of 1253 B. S., plaintiff distrained the crops by suit No. 75; but it was reversed by the decision of the deputy collector, dated 28th May 1847, while his suit No. 314 was struck off the file on the 7th July 1847. Hence, as plaintiff has not received his rents, he sues for six annas revenue of 1252, and for the full year of 1253 B. S.

Lukhun Dutt defendant replies that this action cannot be brought, until plaintiff sues for the reversal of the distraint, which was reversed by the revenue authorities on the 28th May 1847. Plaintiff, it is urged, has received rupees 33-8, by the sale of the crops, and rupees 22 on various dates, for which he (defendants) holds dakhilas. Defendant adds he is entitled to receive rupees 90, on account of the value of rice on beegahs 32, which were attached, and that plaintiff is only entitled to rupees 28-5-6.

In his jowaub-ool-jowaub, plaintiff replies that as the summary suit was simply struck off the file, it is not necessary to apply for the reversal of the order.

On the 22nd June 1848, Lukhun Dutt defendant filed a kubool-jowaub, admitting that plaintiff was entitled to rupees 63, and that a settlement of the whole of the accounts of 1252 and 1253 had been made: he could not however, on being asked for them, file any proofs of his alleged payments to plaintiff.

None of the other defendants appeared.

The moonsiff argues that, though defendant may have agreed to plaintiff's demand and plaintiff acquiesced therein, he cannot give a decree for the rent as claimed for the broken period of 1252, and in full for 1253 B. S., because plaintiff has not sued for the reversal of the summary decision issued on the 28th May 1847, No. 75, which decision has become final, this suit not having been instituted within the year, and defendant having objected before the revenue authorities to the jumma. Again, plaintiff has not proved his case under the Circular Orders of the Sudder Dewanny of the 25th of November 1847, and as he cannot act in opposition to the Regulations, although both parties have agreed among themselves, he decrees rent only for the 6 annas of 1252, and for 4 annas of 1253 B. S., leaving the 12 annas referred to in case No. 75, out of his decision against Lukhun Dutt defendant, releasing the other defendants.

Plaintiff appeals, urging that one year has not elapsed, that though he did not actually apply in express terms for the reversal of the distraint award, it was evidently intended in his plaint. Defendant has never denied the jumma, and having agreed to it, and having settled his accounts, the moonsiff should have decreed in full in his (plaintiff's) favor.

JUDGMENT.

The Circular Order of the 25th November 1847 has been rescinded by the more recent one of the 2nd February 1849. This suit was brought within the year, or on the 20th September 1847, the decree of the deputy collector, bearing date the 28th May 1847, and though plaintiff did not sue for the reversal of the decision in the distraint case, it was evidently implied, for he referred to that decision as the reason why he had instituted this action. Again, by referring to the distraint fysicalahs, also to defendant's reply in this suit, I do not find that defendant ever objected to the jumma; on the contrary, he has all along admitted it, and as this suit was instituted for the recovery of the arrears referred to in suits Nos. 75 and 314, and the parties concerned had amicably adjusted their accounts out of court, soliciting that a decree might be given according to their settlement and agreement, I cannot see how the moonsiff could argue that he would be acting in opposition to the Regulations by decreeing in full according to the kubool-jowaub. However, as the moonsiff's arguments are in a great measure, as above pointed out, opposed to the facts of the case, I remand it that he may more carefully examine the record, and decide it anew. The appeal is decreed, and the value of stamp paper will be refunded in the usual way.

THE 18TH MAY 1850.

Case No. 283 of 1848.

Appeal from the decision of Kaze Hamed dly, Moonsiff of Sonamookhee, dated the 19th June 1848.

Khoodeeram Doss and Haradhun Doss, Plaintiffs,

versus

Shunkershun Doss and others, Defendants.

SUIT, to recover the value of rice and straw, rupees 3-5-5, and laid at rupees 63-3-15.

Plaintiffs state that their gooroo, Luchmun Doss, whom they have made a nominal defendant, willed away all his lakhiraj lands, tanks, &c., in mouzahs Cheetunpoor and Nachunhattee to Rughoonath Jee and others, Thakoors, for the performance of their poojahs and other ceremonies, the said gooroo made plaintiffs the managers and executed an hibbanamah on the 27th of Sawun 1254 B. S., which was duly registered, and they were put in possession, &c. In mouzah Nachunhattee there is a parcel of 10 cottahs of land in part of $2\frac{1}{2}$ beegahs, agreeably to the boundaries specified, which the gooroo used to cultivate nij and by ryots. On the 27th Sawun 1254 B. S., plaintiffs allege they cultivated in nij jote, and on the 20th Assin following the rice was cut and left on the ground, being 9 puns by calculation. Defendants, with the exception of the gooroo, came and carried off the rice, and plaintiffs now sue for its value.

Shunkershun Doss defendant replies by saying that the hibbanamah is all false, that Luchmun Doss is a byragee, and their cook, he possesses no lakhiraj property; that the rice was his and not plaintiffs. The $2\frac{1}{2}$ beegahs belong to his dewuttur, in mouzah Cheetunpoor; and, on the 21st Assar 1251 B. S., he (defendant) gave a pottah for it to Luchmun Doss, whose kubooleut he holds at a jumma of rupees 2-11.

The case proceeded *ex parte* on the 8th of February 1848, after which defendants filed their reply, but the moonsiff should have recorded some proceeding admitting it, agreeably to Section 24, Regulation XXII. 1814.

In the opinion of the moonsiff, plaintiff has satisfactorily proved his case, and defendant has not replied to that portion which accuses him of having carried off plaintiff's rice. Defendant's witnesses are contradictory and cannot be believed; and though called upon to apply to the court that his other witnesses might be summoned, defendant has not done so. The paper on which the kubooleut of Luchmun Doss, dated 21st Assar 1251 B. S., is written, is an old sheet and prepared for the occasion. The moonsiff therefore decreed the case in plaintiff's favor against defendants.

Shunkershun Doss defendant appeals, he maintains that the hibbanamah is a forgery, that Luchmun Doss is his ryot, and he has never

appeared: the land at issue is his dewuttur, and plaintiff's object is by obtaining an insignificant decree to ensure a title for something better. He urges that an ameen should have been deputed to enquire into the matter, Luchmun Doss's kubooleut is genuine, and he is a common byragee, that his witnesses must have been tutored, &c.

Respondent appeared without summons.

JUDGMENT.

Plaintiffs have clearly established the carrying off of their rice and straw, and their registered hibbanamah is beyond suspicion, while the kubooleut tendered by appellant (defendant) dated the 21st Assar 1251 B. S., said to have been given to him by Luchmun Doss, is clearly fabricated for the occasion; it is written on an old piece of crumpled paper, and not a particle of the writing is to be seen on any of the creases. I consider therefore that the decision of the moonsiff is correct; and being of opinion that appellant (defendant) had every opportunity of proving his objections, and that no local enquiry was necessary, I reject the appeal, and uphold the decree of the lower court.

THE 21ST MAY 1850.

Case No. 96 of 1850.

Appeal from the decision of Kaze Hamed Ally, Moonsiff of Sonamookhee, dated the 25th March 1850.

Gunganerain Roy, Putneedar of lot Durreaupoor, Plaintiff,

versus

Gunesschunder Roy and Musst. Narainy Debia, ryots, Bhyrub Soor, discharged gomashta, and Muthooranath Roy, Defendants.

Oozurdar Ramtunnoo Roy, Durputneedar of lot Deehy Durreaupoor, Appellant.

SUIT for balance of rent due from the abovementioned ryots, defendants, for 1256 B. S., on account of their lands, situated in mouzah Durreaupoor, &c., laid at rupees 11-4-19-2, for the full year, or rupees 5-10-9-3 by this action, *plus* interest, annas 5-12, total rupees 6-1-3.

This case is in every way similar to Nos. 75 and 77 of 1850, decided by me on the 7th instant, and for reasons assigned therein I decree this appeal, and remand this case for trial *de novo*, according to law. Value of stamp paper to be refunded.

THE 21ST MAY 1850.

Case No. 97 of 1850.

*Appeal from the decision of Kaze Hamed Ally, Moonsiff of Sonamookhee,
dated the 25th March 1850.*

Gunganerain Roy, Plaintiff,

versus

Rammohun Naiek, ryot, and the other defendants as in case No. 96,
Ramtunnoo Roy, Oozurdar, Appellant.

SUIT for 8 annas kist of the revenue for 1256 B. S., due from the aforesaid ryot, on account of his lands, situated in Durreaupoor, &c., laid at rupees 13-4-16, interest annas 13, total rupees 14-1-16.

My decisions, Nos. 75 and 77 of 1850, dated the 7th May 1850, are sufficient for this case. Ordered, therefore, that the appeal be decreed, the case be remanded, and value of stamp paper refunded.

THE 21ST MAY 1850.

Case No. 98 of 1850.

*Appeal from the decision of Kaze Hamed Ally, Moonsiff of Sonamookhee,
dated the 25th March 1850.*

Gunganerain Roy, Plaintiff,

versus

Kalee Roy Kaist, ryot, and others as in the preceding case.

Ramtunnoo Roy, Oozurdar, and Kalee Roy, Ryot, Appellants.

SUIT for 8 annas kist of the revenue of the year 1256 B. S., due from the ryot, defendant, on account of his land situated in Durreaupoor, rupees 8-10-13-2, *plus* interest annas 8-11-1, total rupees 9-3-4-3.

Defendant, ryot, in appeal, says he has already paid a portion of his revenue on several dates to the gomashtha of the oozurdar, otherwise the case is precisely similar to Nos. 75 and 77, decided on the 7th May 1850, and, for reasons assigned in those two fysicalahs, ordered, that the appeal be decreed, and the case remanded. Value of stamp paper to be refunded in the usual way.

THE 21ST MAY 1850.

Case No. 99 of 1850.

*Appeal from the decision of Kaze Hamed Ally, Moonsiff of Sonamookhee,
dated the 27th March 1850.*

Gunganerain Roy, as in the preceding case, Plaintiff,

versus

Bishonath Ghose, Ryot, and others, as above.

Ramtunnoo Roy, Oozurdar, and Bishonath Ghose, Ryot, Appellants.

SUIT for 7 annas kist of the revenue of the year 1256 B. S., due from Bishonath Ghose, ryot, on account of his lands in Durreaupoor, rupees 19-2-10, interest annas 14-5, rupees 20-15.

Appellant states he has paid his rents to the oozurdar, durputneedar's gomashta, otherwise this case is similar to others just now decided, and, for reasons given in my fysalabs Nos. 75 and 77 of 1850, dated the 7th of May 1850, I decree this appeal, and remand the case for trial *de novo*. Value of stamp paper to be refunded.

THE 21ST MAY 1850.

Case No. 100 of 1850.

THIS and appeal No. 98 are in every way similar, in one the defendant appeals, in the other the oozurdar Ramtunnoo.

For reasons assigned in cases Nos. 75, 77, and 98, it is ordered, that the appeal be decreed, and case remanded. Value of stamp paper to be refunded in the usual way.

THE 21ST MAY 1850.

Case No. 101 of 1850.

*Appeal from the decision of Kaze Hamed Ally, Moonsiff of Sonamookhee,
dated the 27th March 1850.*

Gunganerain Roy, Plaintiff,

versus

Bhyrub Soor, Ryot, and others, Defendants.

Ramtunnoo Roy, Durputneedar, Oozurdar, and others, Appellants.

SUIT for 7 annas kist of the revenue of 1256 B. S., due from Bhyrub Soor and others, heirs of Kanye Soor and others, deceased, laid at rupees 62-1, *plus* interest rupees 2-15 = rupees 65, on account of their lands, situated in dheenij Durreaupoor and other mouzahs.

For reasons assigned in my decrees, dated the 7th of May 1850, in appeals, Nos. 75 and 77, the cases being similar, I decree this appeal, and remand this case to be tried *de novo*. Value of stamp paper to be refunded.

THE 21ST MAY 1850.

Case No. 102 of 1850.

Appeal from the decision of Kaze Hamed Ally, Moonsiff of Sonamookhee, dated the 27th March 1850.

Gunganerain Roy, Plaintiff,

versus

Kaleepershaud Roy, Brahmin, Ryot, and others, as in preceding cases. Ramtunnoo Roy, Oozurdar, Appellant.

SUIT for 7 annas kist of the revenue of 1256 B. S., due from Kaleepershaud, ryot in dehec nij Durreaopoor, &c. laid at rupees 11-12, *plus* annas 8-15 = rupees 12-4-15.

This and appeals Nos. 75 and 77 of 1850, being precisely similar, for reasons assigned in those two decrees I remand this case for re-trial, and decree the appeal. Value of stamp paper to be refunded.

THE 21ST MAY 1850.

Case No. 105 of 1850.

IN this case Ramtunnoo Oozurdar, and in suit No. 108 the ryot appeals.

Both cases being similar, for reasons assigned in my decrees Nos. 75, 77, and 108, I decree this appeal, remand the case for re-trial, and the value of stamp paper will be refunded in the usual way.

THE 21ST MAY 1850.

Case No. 106 of 1850.

THIS and appeal No 99, this day decided, are similar cases; in one the ryot appeals, in the other Ramtunnoo oozurdar.

For reasons assigned in my decrees Nos. 75, 77, and 99 of 1850, I decree this appeal, and remand the case for trial *de novo*. Value of stamp paper to be refunded in the usual way.

THE 21ST MAY 1850.

Case No. 108 of 1850.

*Appeal from the decision of Kazeer Hamed Ally, Moonsiff of Sonamookhee,
dated the 23th March 1850.*

Gunganerain Roy, Plaintiff,

versus

Bhyrub Dutt, Ryot, and others, above, Defendants.

Ramtunnoo Roy, Oozurdar, and Seetanath Dutt, one of the Defendants and Surbarakar of the Ryot, Appellants.

SUIT for 8 annas kist of the revenue of 1256 B. S., due from ryot on account of his lands in mouzah Durreaopoor rupees 5-10-3, *plus* interest, annas 5-11 = rupees 5-5-14.

The surbarakar of the ryot defendant appeals, that he has already paid his rents to the durputneedar; and as in other respects this case is similar to Nos. 75 and 77, decided on the 7th of May 1850, for reasons therein given, I decree this appeal, and remand this case for trial *de novo*. Value of stamp paper to be refunded.

THE 21ST MAY 1850.

Case No. 317 of 1848.

*Appeal from the decision of Moulvee Mauzum Hossein, Moonsiff of
Madhubgunj, dated the 15th July 1848.*

Rampurshaud Bhuggut and Ram Mohun Ghose, Plaintiffs,

versus

Mohun Mullick, Defendant.

SUIT to recover the amount due on a bond, dated the 15th Assin 1247 B. S., principal rupees 31, interest 26-0-19 = rupees 57-0-19.

Plaintiff states that defendant borrowed from their gomashtha at the Judubnuggur cutcherry on the above date rupees 31, promising to repay him in Jyte, the cash was theirs, and defendant never having repaid the loan, plaintiffs bring this action.

The case proceeded *ex parte*, and, after the notice and ishtehar had been proved to have been served on defendant, he appeared and filed a vakalutnamah, whereupon plaintiffs were called upon for their proof and defendant for his reply.

In his reply, defendant repudiated the bond, referred to his having been successful in carrying several suits against plaintiffs, that enmity existed, &c.

In due course the moonsiff deputed the serishtedar of his court to institute local enquiries, and his papers and proceedings were tendered.

The moonsiff cannot credit the bond or borrowing, he believes enmity exists between the parties concerned, and this action is the consequence. Plaintiffs' witnesses are very contradictory, and the stamp paper on which the bond is executed was purchased in the Midnapore district. He consequently dismisses plaintiffs' case.

Plaintiff appeals, urging he has proved his bond and the borrowing, that no local enquiry was needed, and had it been, one of the regular ameens should have been deputed, that paper purchased in another district is equally good with that sold in the district where the suit is instituted, &c.

JUDGMENT.

It is unnecessary to go further into the case than to remark that stamp paper, no matter where purchased, must be considered good until it is shown to be spurious, and this plea of the moonsiff could never hold good. His proceedings are however illegal, and there is nothing to show that the serishtadar of his court is a sworn ministerial officer, or that he attested on solemn declaration the truth of the report he delivered into court as required by Circular Order, No. 32, dated the 17th November 1847. Hence I remand the case to be tried *de novo*, observing that as there are two regular ameens in this chowkey there was no necessity for the deputation of the serislitadar of the moonsiff's court. Ordered, therefore, that the appeal be decreed, and the case remanded for trial *de novo*. Value of stamp paper to be refunded in the usual way. Respondent, having appeared without summons, must pay his own costs.

THE 21ST MAY 1850.

Case No. 233 of 1848.

Appeal from the decision of Moulvee Abdool Uzeez, Moonsiff of Chowkee Oundah, dated the 10th May 1848.

Kishen Dutt, Plaintiff,

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versus

•
Kinnaram Sawunt, Defendant.

SUIT to recover the balance of a bond debt, rupees 26.

Plaintiff states, defendant borrowed rupees 24, giving him a bond, on the 14th Phalgun 1251 B. S., and pledging his jumyee land in mouzah Mowchoorah. During the year 1252 B. S., plaintiff received rupees 3-12, on account of certain crops; in 1253, defendant gave him nothing; and in 1254, a further sum of rupees 3 was liquidated, altogether 6-12, which being deducted from the bond leaves rupees 17-4 principal, and rupees 8-12 interest, total rupees 26. On the 26th Chyte 1253 B. S., plaintiff's house was robbed and the bond was lost; but on the 19th of Sawun 1254 B. S., defendant agreed to

give plaintiff interest at the rate of one pie the rupee, and signed an account for rupees 29-10. But as this interest is illegal, he sues simply for the principal with the usual interest due thereupon.

The land was attached under Regulation II. 1806, and the case was decided *ex parte*. Plaintiff having established the borrowing and execution of the bond, also the fact of the theft and the serving of the notice and ishtchar, the moonsiff decided the case in his favor.

Kinnaram, and on his demise, his widow, appeals, setting forth that the notice and ishtchar were not legally served; that the theft was never proved by any police report, that the bond on plain paper is of no use to plaintiff; interest having been illegally agreed to, plaintiff's suit cannot proceed under Section 9, Regulation XV. 1793; and that he never held any land in Mowchoorah, so that he never could have pledged it, &c.

JUDGMENT.

Plaintiff does not sue on the bond or account on plain paper; but it is not clear whether he does not produce it as an exhibit, and if so, it is inadmissible under Clause 1, Section 38, Regulation XXIII. 1814. Leaving this point, however, out of the question, I find the notice and ishtchar have not been, strictly speaking, legally served upon defendant, the witnesses who have appeared to prove it being residents of mouzah Barooeparah, where plaintiff resides, and not neighbours of the defendants, or the mundul, or other respectable persons living in defendant's village, as required by Clauses 1 and 2, Section 22, Regulation XXIII. 1814, and Construction No. 775. Ordered, therefore, that the appeal be decreed and the case remanded for investigation *de novo*. Value of stamp paper to be refunded in the usual way.

THE 21ST MAY 1850.

Case No. 359 of 1848.

Appeal from the decision of Baboo Mohun Lab Panday, Moonsiff of Burjoorah, dated the 14th September 1848.

Gopal Mundle, Plaintiff, .

versus

Nuccd Goorooec and Gopal Goorooec, heirs of Nityanund Goorooec, Defendants.

SUIT, to recover a bond debt of rupees 31, principal, and rupees 32 interest, total 63 rupees.

Plaintiff states that defendants borrowed, on various occasions, money from him, and a balance was found to be due from him of rupees 33, he paid up rupees 2 on the 2nd Phalgun 1247 B. S., gave him a bond on the 4th Sawun 1246 B. S., promising to repay it in Phalgun; but not having done so, plaintiff sues.

Defendants deny the loan and bond, urge that they are not in possession of their father's property, and plaintiff has brought this action through spite.

Plaintiff produces the bond and a list of thirteen witnesses, but the moonsiff does not believe them, and argues that, as the execution of the bond is not established, it is unnecessary to go further into plaintiff's case, he consequently dismissed it with costs.

In appeal, it is urged that plaintiff has clearly proved the validity of the bond, that the rate of interest is legally inserted therein, and that the contradictions pointed out by the moonsiff are not so, &c.

JUDGMENT.

This is decidedly a hurried and unsatisfactory decision. The least the moonsiff should have done, as he doubted the bond, was to have allowed plaintiff to prove by whom it was written, if not by the writer in person, by showing other writing of his. He wished to do this, and to show that he had frequently demanded the money due to him by defendant without avail, but he was overruled by the moonsiff. Further evidence would probably have cleared up the moonsiff's doubts. And as I do not think the evidence which has been received is sufficient to quash the bond, and being of opinion that the plaintiff's other witnesses should be examined, I remand the case to the lower court, in order that it may be restored to the file of the moonsiff and re-investigated. The appeal is decreed, the value of stamp paper will be refunded in the usual way.

THE 21ST MAY 1850.

Case No. 393 of 1848.

Appeal from the decision of Kazeel Hamed Ally, Moonsiff of Chowkee Sonamookhee, dated the 25th November 1848.

Beeshorooop Goshain, Plaintiff,

versus

Kishen Patur Musst. Surusuttee Gwalin, and others, Defendants.
No. 1, Khitab Mundle, No. 2, Nuffer Chund Mundle, and No. 3, Nityanund Dey and others, Objectors.

SUIT, to recover the amount balance due on a kistbundy agreement, dated the 15th of Bysakh 1241 B. S., principal Sicca rupees 161-8, interest rupees 110-3-2, total Sicca rupees 271-11-2, or Company's rupees 289-11-16.

Plaintiff states that Kishen Patur, Kumul Patur, (deceased,) and Musst. Surusuttee squared their accounts, and a balance of rupees 195 having been found to be due to him, they gave him a joint kistbundy, on the above date, pledging various property, tanks, lakhiraj, &c., in mouzah Radharumunpore, &c., and promising to repay their debt at the rate of rupees 15 per annum in the month

of Maugh from 1241 to 1253 B. S. Defendants paid him on the 13th of Chyite 1241 B. S., in cash rupees 15, by rice on the 21st Phalgun 1243 B. S. rupees 16-8, and on the 11th Bhadoon 1244 B. S. rupees 2, altogether rupees 33-8. The residue not having been liquidated, plaintiff sues Kishen Patur, the heir of Kumul Patur, and Surusuttee and her child who has attained his majority.

Musst. Surusuttee Gwalin, defendant, replied on the 23rd of November 1848, or more than seven months after the suit was instituted, and after plaintiff's witnesses had been heard, and the claimants had filed their respective proofs, &c. She denied the borrowing and the bond or agreement, declared her husband was alive when the bond is stated to have been executed, so that there was no necessity for her to become a party to it. She urged that the kistbundy was a forgery, and plaintiff had specified therein 6 beegahs of land in mouzah Bowanchgurriah, whereas there are but 4 beegahs there, and this was purchased by Kishen Patur only in 1244 B. S., in execution of a decree, so that it could not have been pledged in 1241 B. S., &c.

Khitab Mundle, claimant, and holding one decree, No. 174, Nuffer Chunder Manjee, holding two decrees, and Nityanund Dey and others with one decree out against Kishen Patur and others, declared separately that plaintiff's kistbundy was a forgery, and he had got up this case and the said document to free themselves (defendants) from the several decrees which were in course of execution against them, and for which their property had been attached, &c.

In the opinion of the moonsiff, plaintiff has proved the loan and kistbundy by witnesses, although his witnesses could not specify *seriatim* the various property as it was entered in the said kistbundy. He admits that plaintiff was frequently called upon to produce the writer of this agreement, but did not do so; that it was never registered; that Khitab Mundle, one of the claimants, had obtained a decree No. 52, in his court, and had taken out execution thereof against the defendants, and a portion of the property which was stated by plaintiff to have been mortgaged to him by the kistbundy; that plaintiff never came forward or objected whilst suit No. 52 was pending, and that a further portion of the so-called pledged property was only purchased by Kishen Patur, one of the defendants, in 1244 B. S., so that he could not have mortgaged it in 1241 B. S. Musst. Surusuttee Gwalin, defendant, not having, however, proved her case, and none of the other defendants having replied, and no enmity or collusion having been proved, the moonsiff cancels the kistbundy as regards the mortgaged property, and decrees the amount entered in the plaint against Kumul Patur's other property, as also against Surusuttee and Kishen Patur personally, excluding the property referred to in suit No 52 and Kishen Patur's purchase in 1241 B. S., which is entered in the said kistbundy; and he adds

that after the sale of the property so excluded, if there should be a surplus, then plaintiff may have it, &c.

In appeal, plaintiff objects to the moonsiff's having excluded from his decree any portion of the property, which is pledged to him by the kistbundy, and which he has proved defendants gave to him: he urges that the moonsiff should not have admitted Musst. Surusuttee's reply eight months after: he pleads ignorance of Khitab Mundle's claim and suit No 52, &c.

Khitab Mundle, claimant, files a petition in reply.

The case was gone into on the 20th instant and postponed, and I now proceed to pass judgment upon it.

JUDGMENT.

The moonsiff's proceedings are manifestly illegal and irregular; illegal in having admitted Musst. Surusuttee defendant's reply after plaintiff's evidence and proof had been received, *see* Section 24, Regulation XXIII. 1814, irregular in having given an order regarding the disposal of sale proceeds connected with a case, which was quite distinct from this one, and in which he could not pass any orders until the sale had been concluded. Again, by examining the kistbundy it looks extremely suspicious, and appears as if an old sheet of paper had been procured for the occasion, as there is no writing on any one of the creases: and after condemning the said kistbundy and proving, as the moonsiff does, that property is pledged therein which could not, at the time of its execution, have possibly belonged to defendants, and that other portions of the said mortgaged property have passed into other hands by decrees of court, without any objections being started by defendants while these suits were pending; and, finally, seeing that there were several decrees in course of execution against these defendants, the whole showing that there was fraud and collusion existing between plaintiff and some of the defendants, I cannot understand on what principle of equity or justice the moonsiff could possibly give a decree in plaintiff's favor instead of dismissing his case. Under the provisions contained in Sections 17 and 40, Regulation XXIII. 1814, however, as the case has been illegally and irregularly decided, I cannot but remand it for trial *de novo*. Ordered, therefore, that the appeal be decreed, the case remanded, and value of stamp paper refunded in the usual way.

THE 25TH MAY 1850.

Case No. 16 of 1848.

Appeal from the decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated the 7th July 1848.

Radhakanth Singh and Nubkishore Biswas, Talookdars of lot Shabaunpoor, (Plaintiffs,) Appellants,

versus

Thakoordoss Tauttee and others, (Defendants,) Respondents.
Guddadhur Banerjea, Oozurdar.

SUIT for rent due on beegahs 35-13-3, in mouzah Kumulpoor, pergunnah Shabaunpoor, including a tank called Gunganundee, which was assessed by the former talookdar at Sicca rupees 55-13-15-1, or Company's rupees 59-9-15, also for a kubooleut from 1243 to 1253 at that rate; laid at rupees 574-5-15.

Plaintiff states that the former talookdar brought an action, No. 6901, against Pauchoo Manjee (deceased,) ryot of mouzah Kumulpoor, for the assessment of his lands, and by that fysicalah the rate was fixed at Sicca rupees 55-13-15-1, on beegahs 35-13-3, including tanks. In 1244 B. S., plaintiffs attached the crops for their rent calculated at the above rate, whereupon Thakoordoss Tauttee, one of the defendants, stated that he had purchased 12 annas of the said jumma from Manick Manjee and others, sons of the deceased ryot Pauchoo, and one Soophul Manjee urged that he held the mortgage of the remaining 4 annas. These two parties then claimed the land on a jumma of rupees 30-8, which had, they said, been agreed to and settled by the previous talookdar, and brought a suit in the Oundah moonsiff's court for the reversal of the distraint. Their jumma was upheld and the distraint declared illegal. Plaintiffs appealed, No. 713, and the principal sudder ameen upheld the jumma settled by fysicalah No. 6901, or at the rate of rupees 55-13-15-1. A special appeal, No. 39, was made to the judge, and, on the 10th May 1841, he decreed that until fresh ishtehars were issued for the information of the ryots the fysicalah jumma, No. 6901, could not be demanded. After this, plaintiffs say they issued their ishtehars on the 7th of Bysakh 1250 B. S.; again, on a date not given; and for a third time on the 21st Jyete 1254 B. S. Thakoordoss Tauttee and others would not come forward to settle for their lands: plaintiffs consequently sue them for their jumma at the rate entered in fysicalah No. 6901, from 1243 to 1253 B. S. inclusive.

Thakoordoss Tauttee, defendant, replies that the former talookdar, true enough, obtained the decree No. 6901, and the jumma was settled at rupees 55-13-15-1, but Pauchoo Manjee, ryot, was dissatisfied and appealed, whereupon the talookdar enquired into the matter, and the jumma was adjusted and fixed at rupees 30-8; the appeal

was then dropt, and the rent has been paid regularly at this rate from 1232 B. S. In 1241 B. S., 17th Bysakh, he (defendant) Thakoordoss, purchased a 12 annas share in the said lands, and jumma belonging to Pauchoo ryot, had a dakhil-kharij effected in the zemindary serishta, a pottah was granted to him, and he has paid his rent accordingly. During the year 1253 B. S. plaintiffs became the purchasers under Regulation VIII. 1819, and received his rent for the 16 annas at the rate of rupees 30-8, without any objection. In 1244 B. S., plaintiffs distrained the crops, &c., as stated by them. Plaintiffs have not specified the boundaries of the land in dispute: he (defendant) has paid his 12 annas rent, rupees 22-14, regularly, agreeably to receipts in his possession. No ishtehars were issued, and he knows nothing of the higher jumma specified in fysicalah No. 6901.

In the jowaub-ool-jowaub it is mentioned, in addition to the matter set forth in the plaint, that defendants' plea of having had the lands re-settled upon a lower jumma, is false, ishtehars were issued, &c.

Gudadhur Banerjea, claimant, says he purchased the talook in 1255 B. S., and wishes to be heard.

JUDGMENT.

On going thus far through the case, I find that the rules contained in Sections 10 and 12, Regulation XXVI. 1814, have not been attended to; consequently, it is useless to go further into it; and with reference to the Circular Order of the Sudder Dewanny Adawlut No. 5, dated the 8th of May 1850, and the court's decision of the 5th of March 1850, alluded to therein, I decree the appeal, and remand the case to be tried *de novo*. Value of stamp paper to be refunded in the usual way.

THE 25TH MAY 1850.

Case No. 2 of 1849.

Appeal from the decision of the Officiating Deputy Collector of Bancoorah, dated the 16th March 1849.

Goshein Doss Chowdhry and others, Talookdar Durputneedars of mouzah Naikollah, Plaintiffs,

versus

Bhyrub Chunder Chowdhry and others, Defendants.

Kishub Mookerjea and others, Oozurdars.

PLAINTIFFS sue to resume and assess beegahs 45-10 of rent-free land in mouzah Naikollah, under Section 30, Regulation II. 1819, laying their claim at rupees 792.

Bhyrub Chunder Chowdhry and others state, in reply, that they hold possession of jungle, tanks, bunds, &c., altogether beegahs

217-10, in mouzahs Naikollah and Hurrypore, the area may now be 400 beegahs, there are several sharers, and the whole is their

There are three oozurdars—

	Beegahs.		
Kishub Mookerjea for	1	7	0
Gopal Chunder Akall,	3	15	0
Punchanund Mullick and others, ...	1	10	0

these say that defendants cultivate these lands as their ryots; that they pertain to their lakhiraj, and plaintiff has included them in his suit wrongfully.

On the 14th September 1848, the late deputy collector directed the nazir of his office to enquire summarily whether the land in dispute was above or under beegahs 100. An ameen on behalf of the nazir filed his papers. Bhyrub Chunder, defendant, produced a sunnud dated the 10th Sawun 1159 B. S., also a fysalah No. 2444, and witnesses were heard.

The deputy collector observes that in the sunnud filed by defendants the area is given 7 droons, 1 aree, which are equal to beegahs 217-10; but the kyfeut of the nazir beegahs 1,247 had been measured in mouzahs Hurrypore and Naikollah, of which beegahs 273-8 were mal, and beegahs 121-7 lakhiraj, belonging to other parties, altogether beegahs 395-10, leaving beegahs 851 lakhiraj; and as the said quantity was in excess of beegahs 100, it was necessary that an enquiry should be instituted into the matter by Government: it was therefore ordered, that plaintiffs' case be dismissed, and the separate suit be entered on the register on the part of the Government.

Plaintiffs appeal, objecting to the ameen's kyfeut, urging that his enquiries were made during their absence and collusively, the lands measured off have not been properly distinguished, defendants have not proved their lakhiraj title, and they file further documents in proof of their claim to the resumption of the land in dispute, &c.

Gudadhur Bannerjea, putnee talookdar of Naikollah, lot Hurrypore, files a petition supporting plaintiffs.

JUDGMENT.

A case having been instituted before the deputy collector under Section 30, Regulation II. 1819, it was his duty to decide with reference to Construction No. 576, whether the alleged rent-free tenure was valid or invalid; but there is no decision to this effect, and plaintiff's case is dismissed, because, forsooth, the measured lakhiraj land has proved more than 100 beegahs, and it is necessary to enquire into it on the part of Government. Again, the late deputy collector directed the nazir of his office to enquire into the case; but how and by what authority the said nazir delegated the duty to an irresponsible ameen does not appear, nor is it shown that

the papers which were filed were so filed on oath. Again, defendants have not produced any sunnud, or other documents in support of their lakhiraj title. On the whole, then, the case is altogether incomplete, and plaintiffs' right as advanced in his suit cannot be dismissed, because Government may have any lien on the land in dispute owing to its having been included in a lakhiraj tenure, which, on questionable evidence, is said to be in excess of 100 beegahs. If the Government have any claim, they must sue the party they may find in possession, but this case must be decided on its merits. Ordered, therefore, that the appeal be decreed, the case remanded for trial *de novo*, with reference to the foregoing observations, and value of stamp paper be refunded in the usual way.

THE 25TH MAY 1850.

Case No. 4 of 1849.

Appeal from the decision of the Officiating Deputy Collector of Bancoorah, dated the 8th December 1849.

Manik Raha, Putnee Talookdar of lot Rampore, Plaintiff,

versus

Suroop Patur and others, Defendants.

SUIT to resume and assess 28 beegahs of land, held under invalid lakhiraj tenures, laid at rupees 774.

This case is referred to at page 97 of the Zillah Decisions of West Burdwan, for the month of October 1849, case No. 3 of 1849, dated 30th of October 1849.

The officiating deputy collector, by his proceeding of the 27th of April 1847, struck off this case from his file, because he considered it was inadmissible under Section 30, Regulation II. 1819, as only such lands as paid *no rent* at all were liable to resumption, under that section: he observed too that he was satisfied from the enquiries he had made, and the proofs which had been tendered, that the defendants held the land as punchowkee, at a quit rent of rupees 2.

The judge, on hearing the appeal, entertained great doubts on the subject of the defendants' (respondents') plea: he thought that the chars alleged to have been granted by Messrs. Dawson and Haselrigge were unsupported by any evidence from the collector's office, and were in themselves suspicious, being irregularly dated; that further enquiry should be made into them; that they should be compared with other documents of a similar description, and that a more complete investigation should be entered into regarding the lands held by Dalalee and Panchanund, through whom defendants claim, and of which plaintiff held copies of the taidads. At the same time, as the officiating deputy collector had made defendants pay their own costs, although plaintiff's case had been struck off, the judge remanded the case for further enquiry, &c. &c., as above.

The officiating deputy collector, instead of following up the enquiries enjoined by the judge, contents himself by persisting in his opinion of the 27th of April 1849, and argues that as the land in dispute is not lakhiraj but punchowkee, he cannot enquire into the matter, he refers to Construction No. 981, and wishes for a reference to the Sudder Dewany Adawlut; and, after referring to the judge's order touching the costs, the officiating deputy collector again strikes the case off his file, charging plaintiff with his own and defendants' costs, and solicits a reference may be made to the Sudder on the subject. This reference was, however, returned to the officiating deputy collector on the 29th of December 1849, to be accompanied with an English report, and there it has rested.

JUDGMENT.

The officiating deputy collector's proceedings of the 8th of December 1849, against which this appeal has been preferred, are altogether irregular and illegal: irregular because he did not institute the enquiries he was directed to make on this case being remanded to him, and illegal because he appears to have decided it in the absence of the parties concerned. The officiating deputy collector is wholly in error in saying that this suit cannot be entertained under Section 30, Regulation II. 1819; if he will refer to the plaint he will find that this suit has been brought to resume and assess 28 beegahs of land held as lakhiraj or rent-free, and the plea set up in defence is that the land is punchowkee, or held at a quit rent of rupees 2. Had plaintiff sued for the resumption of the punchowkee title or admitted it, the case certainly could not have been tried under Section 30, Regulation II. 1819, but it must have been contested in the civil courts. Plaintiff, however, denies that the land is punchowkee (see his rejoinder,) and urges that this plea has been falsely advanced. Hence the only point to be determined was and still is, (see Construction No. 576,) whether the alleged plea is valid or invalid. If, in the opinion of the deputy collector, the plea of the tenure being a quit rent one was proved, he should have dismissed plaintiff's case, distinctly saying so, and not striking it off his file, because he could not try it. I agree with Mr. Garstin in thinking the plea is not only suspicious but extremely lame, and being of opinion that a local enquiry by an ameen into the lands held by Dalalee and Punchanund, as well as an examination into the several documents filed by defendants, also a comparison of them with others of a like nature, should be instituted, I decree the appeal, and remand the case, by a precept, to be decided within three months from this date, agreeably to the second paragraph of Construction No. 981, with reference to the foregoing observations. Value of stamp paper to be refunded in the usual way.

ZILLAH CHITTAGONG.

PRESENT: A. SCONCE, Esq., OFFICIATING JUDGE.

THE 9TH MAY 1850.

No. 155 of 1849.

*Appeal from the decree of Moulvee Abdool Jubbur, Moonsiff of Sundeep,
dated 17th February 1849.*

Teetoo Ghazee, (Plaintiff,) Appellant,

versus

Alum Ghazee and Roshun Manjee, (Defendants,) Respondents.

THE plaintiff in this case sought to recover the value of 29 kunooas and 1 kutha of paddy, which, as he averred, was due to him from the defendants on account of an advance of rupees 13 made by him to Roshun in Assin 1252: he also stated that, at that time, three others, brothers, lived with Roshun, and that, on their separating, Alum Ghazee, one brother, had undertaken to repay him, the plaintiff, but did not.

In answer, Alum Ghazee denied any responsibility in the matter, while Roshun Manjee, admitting that 12 rupees had been lent to himself by plaintiff for trading purposes, asserted that, on the family separating, Alum undertook to pay rupees 13 to plaintiff, that is, one rupee as profits of trade in addition to the original advance of rupees 12.

The moonsiff, finding, as he conceived, discrepancies in the plaintiff's witnesses' depositions, dismisses the suit; but with the plain admission of Roshun it seems to be impossible not to decree the suit against him. The only doubt that might arise is whether plaintiff, in expressing his willingness to be paid by Alum Ghazee, had absolved Roshun from all liability for the debt. But I see no grounds for this inference. Plaintiff gave no acquittance to Roshun; nor, on the other hand, do I find any sufficient evidence to cast any of the onus of the undischarged debt on Alum Ghazee. Unquestionably the advance was made to Roshun only, and in this action I am not called upon to adjust the accounts of him and his brothers.

I therefore decree rupees 13 against Roshun, with interest from 1st Kartick 1252: whatever costs were incurred by Alum shall be paid by appellant: Alum's own costs in proportion to decree will be borne by Roshun.

THE 11TH MAY 1850.

No. 328 of 1849.

Appeal from the decree of Moulvee Motee-oor-Ruhman, Moonsiff of Hutteah, dated 28th May 1849.

The Receiver of the Supreme Court, on the part of Bama Soonderee and Sooroshee Bala, (Defendant,) Appellant,

versus

Pran Ghazee and Ghureeboollah, (Plaintiffs,) Respondents.

I HAVE only to consider in this appeal what justification the appellant has shown for enforcing, by a summary suit instituted before the deputy collector of Noacolly, the payment of higher rent for the year 1253 than the respondents had been in the habit of paying. The ordinary rent paid by the respondents (plaintiffs) was rupees 238-15-11, and it is the purpose of the appellant to prove that they were liable for rupees 52-4-5 in addition; inasmuch as this latter sum, having been once suspended owing to the appropriation of certain lands by the salt department for the manufacture of salt, was again claimable by the zemindars when the manufacture of salt ceased.

Now I must agree with the opinion which the moonsiff has recorded in a clearly expressed judgment. Under whatever circumstances the suspension of jumma took effect (of which we have no specific proof) it is clear that the jumma of the respondents stood at rupees 238-15-11; that they did not, by express engagement, agree to pay the higher sum of rupees 291-4-4; and that preparatory to the demand of this higher jumma, the appellant gave no notice to the respondents of his intention to enforce the payment of it.

The respondent relies upon the fact that the zemindars have been obliged to pay Government higher revenue for the abandoned salt lands, as proof that their tenants are bound to pay higher rent also: but not to say, as appears from a document filed by the appellant himself, that the zemindars entered into a formal engagement to pay the enhanced jumma, it is clear to me in the case of these talookdars that the appellant could not, without notice and without express engagements, *summarily* enforce the payment of an enhanced rent, which has been suspended I know not how many years.

The decree of the lower court is accordingly affirmed, with costs against the appellants.

THE 14TH MAY 1850.

No. 331 of 1849.

Appeal from the decree of Mr. Finney, Sudder Moonsiff, dated 19th March 1849.

Sookhea Beebee, wife of Purdessee, deceased, (Defendant,) Appellant,

versus

Zorowur Singh, for the minor Doorgadeen, (Plaintiff,) Respondent.

THIS suit must be remanded to the lower court for more than one reason. First, I would observe that the plaintiff sued to acquire the settlement of 8 gundahs 2 cowrees of land, which he declared formed part of a settlement for gundahs 14-2, made by the defendant Purdessee with Government; and that the moonsiff's decree does not specify whether or no the measurement daks specified by the plaintiff did actually constitute the daks of the defendant's settlement: enquiry upon this point was the more necessary, inasmuch as defendant pleaded that out of the six daks named in the plaint, only two daks were in his own possession.

Again, the moonsiff seems to have been much guided in his decision by a previous decree for arrears of rent passed by himself on the 16th May 1846; but it appears that this decree was quashed on appeal by a principal sudder ameen on the 6th July 1848.

No doubt there would appear to be some neglect on the part of the defendant Purdessee in following up the pleas; but it is shown by his widow, in appeal, that he had died two or three months before the decree was passed. The value of the stamp of appeal will be refunded.

THE 18TH MAY 1850.

No. 335 of 1849.

Appeal from the decree of Baboo Poornochunder, Moonsiff of Howlah, dated 9th June 1849.

Fukeerchand Nundee, (Defendant,) Appellant,

versus

Parbuttee Churn, (Plaintiff,) Respondent.

THIS is a suit for rupees 27, hire of a boat, besides interest; and for proof of his claim, plaintiff (respondent) relies alone on a presumed admission by the appellant, after an account taken, that this amount was due. The moonsiff has decreed the principal claimed; but to me the grounds of the action are unintelligible. Plaintiff professes to have become owner of the boat by his granting a bond for rupees 41 to the appellant. Now by a separate action it has been determined,

that this bond was restricted to a cash transaction between the parties: so we have no reason to suppose that the plaintiff ever, for a valuable consideration, bought the boat at all. We have, moreover, no proof of a contract between him and the appellant; nor have we proof of the contract terminating; nor have we any statement or any proof regarding the disposal of the boat, after the period of the assumed contract had expired. By a succession of witnesses, plaintiff (respondent) has endeavoured to show that on different occasions appellant admitted some sort of liability: certain witnesses say that he spoke of 23 rupees being due, though not by himself but by one Suroop Chand. But it is more to the purpose to say that plaintiff has not proved upon what circumstances he has based the demand made by him: in his plaint he speaks of the boat having made 10 trips; but this remains as it was made a mere assertion. I must reverse the decree of the lower court, and dismiss the suit, with all costs payable by respondent.

THE 21ST MAY 1850.

No. 500 of 1849.

*Appeal from the decision of Baboo Satcowree Deb, Moonsiff of
Bhutteearee.*

Mahomed Doulut, (Plaintiff,) Appellant,

versus

Azeemooddeen and others, (Defendants,) Respondents.

THIS case must be remanded for further investigation: it was mainly decided in the court below with reference to the inquiry held nominally by an ameen, Ramchunder Ghose; but it has been shown in this court that not Ramchunder Ghose but the serishtadar of the moonsiff's court performed the main part of the ameen's duty. I have to observe also the very injudicious course followed by the moonsiff, who gave no reasons or holding a local inquiry; and not only so, but who also left it doubtful what evidence he expected the parties to adduce before himself, and what before the ameen: for at the very time he had ordered a local enquiry, he called upon the plaintiff to adduce, and did permit him to adduce, witnesses before himself. The value of the appeal stamp will be refunded.

THE 21ST MAY 1850.

No. 340 of 1850.

*Appeal from the decree of Moulvee Feratollah, Moonsiff of Bhojporc,
dated 14th June.*

Musst. Raseshurree and Musst. Biseshurree, (Defendants,) Appellants,
versus

Nunha Ghazee and Sunaoollah, (Plaintiffs,) Respondents.

I HAVE to consider here whether these appellants have justified the enforcement of arrears of rent levied from the respondents.

The latter declared that the rent which they owed on account of the 5 kanes of land held by them, they engaged for with Jan Alee and Yosuf Alee, and that the latter acquired the talook of which this land is part from Bocha Ghazee. On the other hand, the appellants aver that about two months before the alleged sale to Jan Alee and Yosuf Alee, the talookdar Bocha Ghazee had thrown up his engagement, and released the land to themselves as zemindars.

I must hold with the moonsiff that the plea set up by the defendants, these appellants, is unworthy of credit. We have, it is true, two deeds of relinquishment granted on the 23rd Chyete 1207 to the appellants for their respective half shares, and we have also two kubooleuts professedly granted on the same date by Nunha Ghazee, one of the respondents, and we have also witnesses to attest the genuineness of these transactions, but the circumstances are so unsatisfactorily explained that I am compelled to assume that the witnesses lie and the documents are fabricated. The reason assigned for Bocha Ghazee relinquishing the talook in question is, that he owed the zemindars arrears of rent amounting to about rupees 80, which is enough to cover the entire rents of nearly six years. Now there is every reason to assume that this is untrue: for seven or eight years before the land had been mortgaged to Jan Alee; and one of the appellants' witnesses admits that while he as a ryot held portion of the land under the mortgagee, so the mortgagee paid the zemindars. Again, I may add that in a suit instituted several years before the grounds of the present action arose, Bocha Ghazee, as defendant, admits that for six years, 1200 to 1205, he had mortgaged 4 kanes to Jan Alee for rupees 45.

Moreover, it is made to appear that Bocha Ghazee one day, taking Nunha Ghazee (a plaintiff) and Potun with him, went to have his account taken, that his arrears were found to amount to rupees 80, that he was told to pay, and rather than that, he offered his istefa, or relinquishment, pulling out from his pocket for the purpose two blank stamps. If the case of the appellant were not so unsatisfactory as it now stood, I should have required Jan Alee to prove the genuineness of the many dakhilas he has filed for rents paid by him

during the period of the mortgage, but it seems unnecessary to protract the issue.

The decree of the lower court is affirmed, with costs chargeable to appellants.

THE 25TH MAY 1850.

No. 506 of 1849.

Appeal from the decree of Kazeo Guda Hossein, Sudder Moonsiff, dated 24th August 1849.

Mahomed Mokcem, Darogah, and Patun Manjee, (Defendants,) Appellants,

versus

Gorachand Mahajun, (Plaintiff,) Respondent.

THE question before me is whether some waste noabad land bordering an inland nullah, near this town, can furnish the subject of a right of occupancy, and whether by purchase the plaintiff succeeded to that right. It has been maintained by the defendants, these appellants, that the disputed land (5 gundalis) was settled with them by the noabad farmer, and that from its very nature no right of prescriptive occupancy could be derived from it.

I can by no means agree that the mere assumption of possession of noabad waste land justifies the right which the apparent possessor may choose to assert. But this is a peculiar case. In very many directions in the neighbourhood of this town sites of land for shipbuilding, and for the locating of merchandize, and specially for the storing of grass and bamboos, have been time out of mind appropriated. By common custom, such sites are reckoned to be the possession of one man; and not to be the possession of another. On the part of the plaintiff to this action a similar occupancy is fully proved, while on the part of the appellants I have no proof whatever offered to justify the settlement entered into by them. And not only has the plaintiff (respondent) proved possession, but he has proved that he applied to the farmer for a settlement several months previous to the settlement of the appellants. I can conceive the appellants attempting to prove that the respondent (plaintiff) had no exclusive occupancy of the land, or that the land had been always open to the public, or that, if no common right were vested in it, the farmer on some special ground was entitled to dispose of it; but, as already observed, they have justified their opposition to the claim by no evidence whatever. The decree of the lower court is accordingly affirmed.

THE 25TH MAY 1850.

No. 510 of 1849.

Appeal from the decree of Khyrollah Shah Budukshanee, Moonsiff of Zorowargunge.

Mahomed Walee, (Defendant,) Appellant,

versus

Fukeer Mahomed, (Plaintiff,) Respondent.

THIS suit lay for the recovery of the value of maunds 5-18-3 of cotton and a corresponding amount as damages, which cotton Mahomed Walee, through his people, had distrained and misappropriated, on account of the alleged arrears of rent due for the year 1209, from certain land which the plaintiff several years before had alienated to one Aftaboodeen. Moreover, plaintiff showed that Aftaboodeen, by a suit instituted against Mahomed Walee, had acquired (on the 27th November 1846) a decree for the reduction of the rent of the land so transferred to him.

In answer, the defendant, Mahomed Walee, pleaded that he had attached not maunds 5-18-3, but only one maund of cotton; that Aftaboodeen never recorded his name with him as the occupant of the land; and, moreover, that the decree acquired by Aftaboodeen was pending in appeal, but he offered no evidence in support of his objections.

I must maintain the decree of the lower court. In the absence of any evidence on the part of the appellant, I must assume the attachment of maunds 5-18-3 to be on the part of the plaintiff proved; and, moreover, though Mahomed Walee professes to say that he had no notice of the land held by the plaintiff having been transferred to Aftaboodeen, it is clear that, in his answer to the suit instituted by the latter, he fully admitted that Aftaboodeen had held and settled for the land referred to. Under such circumstances he had no justification for his attempt to impose the responsibility of the alleged arrear of rent upon the plaintiff, Fukeer Mahomed.

THE 25TH MAY 1850.

No. 62 of 1850.

Appeal from the decree of Moulvee Ferahutoollah, Moonsiff of Bhojepore, dated 10th January 1850.

Shurefoonissa and Goolmehr, (Defendants,) Appellants,

versus

Haree Beebee, (Plaintiff,) Respondent.

THE moonsiff, in disposing of this case, has strangely misconceived the merits of the suit and the object of the civil procedure.

The plaintiff, declaring that she held a talook left to her by her husband Hareedhun, assessed at rupees 65 per annum, and that the

rent to 1210, all but rupees 15, had been paid, sued to compel the defendants to accept this alleged balance of rupees 15, and to give her a receipt for the same.

In answer, Shurefoonissa averred that, on the 21st Maugh 1209, Hareedhun had resigned the talook in question, and that from 1210 it was entirely in the possession of herself and another as zemindars.

Here then was a plain issue. The moonsiff had to consider, whether for the year 1210, plaintiff (or her husband) having already paid rupees 50 for that year, should, as talookdar, be considered as in arrear for rupees 15. If plaintiff did not possess the talook, and did not owe an arrear on account of the talook, it was impossible to call upon the defendants to receive the sum tendered as a gratuity. But the moonsiff declined to enter into this matter at all: he thought the defendants' plea could not be heard: and even though, as he admits, plaintiff supported her plaint by no proof whatever, he saw no wrong done to defendants in requiring them to receive the sum which the plaintiff was willing to pay. Clearly, this sum could only be paid as an arrear, or as a gratuity; the latter was quite beyond the scope of this action; and as to an arrear being due, the moonsiff would not entertain the plea by which alone it could be determined.

I must remand the case, and I need only further remark that, altogether irrespective of the substantial plea of the defendants (appellants,) the plaintiff having not given evidence, and showing no reason for not adducing evidence, she should be held to have elected the dismissal of her action. The value of the stamp of the appeal petition will be refunded.

THE 30TH MAY 1850.

No. 16 of 1849.

Appeal from the decree of Pundit Sreenath Bidyalagish, Principal Sudder Ameen, dated 10th July 1849.

Sheikh Ahmudoollah Chowdree and Lushkur Alee, (Defendants,) Appellants,

versus

Mahomed Bukhtawur, (Plaintiff,) Respondent.

ON the 5th Sawun 1249, plaintiff (respondent,) having acquired from Lushkur Alee, the farmer of chur Sidhee, a pottah for droons 40 of land, subject for three years to a gradually increasing jumma, and eventually, that is, from 1253 B. S., to an annual jumma of rupees 1,684-12-10, instituted this action to enforce a reduction of jumma, and to recover what he had paid in excess, *on the plea* that the land guaranteed to him by the pottah was by measurement found to be droons 7-3 in excess of the land which he actually held. First of

all plaintiff shows, he, on the 14th Assar 1247, received an amulnamah from the farmer, authorizing him to clear and cultivate a tract of land defined by ascertained boundaries and estimated, but without measurement, to contain 71 droons; and afterwards, simultaneously with the pottah of the 5th Sawun 1249, for droons 40 as above described, he received a second pottah for the remaining 31 droons of the original amulnamah.

The appellants, now joint owners of the chur, both in their answer in the court below and in this appeal, prefer but one plea in resistance to the demands of the plaintiff (respondent;) they say that though there were two pottahs issued, the settlement must be regarded as one; that the origin of the respondent's right was the amulnamah for droons 71; that the lands of both pottahs adjoin, and that the respondent holds more than 71 droons, in fact droons 95-14-10-3; and as if to bring out more strongly the gist of their plea, they added that they themselves were about to sue to compel the plaintiff to enter into a new settlement on account of the land held by him over and above the total land of both pottahs.

Pundit Sreenath, in disposing of the case, assumed the ascertainment of a deficiency to the extent of droons 5-7-7-2-10, to justify the claim preferred, merely adding that as the two pottahs were distinct, the defendants could not be allowed to place the excess of one pottah against the deficiency of the other. And in one sense, the peculiarly narrow plea of the defendants afforded grounds for confining his judgment to this single consideration: but nevertheless it is impossible to avoid the determination of the larger question whether, by the *condition* of the definite settlement which the pottahs of 1249 represent, plaintiff (respondent) has rightfully instituted this action.

The very circumstance through which respondent, by his pleaders before me, would argue out the merits of his claim, seems to me to have the contrary effect. The pleaders urge, and indeed in the plaint it is pointedly stated, that the pottah for droons 40 was granted without a measurement. So it was. But the boundaries of the land conveyed by the pottah were precisely recorded, it was assumed to be divided into four bunds or patches, and the local landmarks by which the parties recognized the four sides of each bund were strictly defined. Unquestionably, it is to be inferred that the pottah covered the land so described, be it more or less; the tract of land so given was transferred by the farmer and accepted by the under-tenant. And, moreover, it is to be observed that what the under-tenant so took, he took not in ignorance and without enquiry, for two years before the land was occupied by him under the amulnamah, and it is obvious that he was content to accept the land described in the pottah as equivalent to an area of 40 droons.

By the terms of the pottah, Mahomed Bukhtawur is declared answerable for all losses sustained by cholera, drought, death,

absconding of ryots, &c., and it is added that should any portion of the land of the pottah by diluvion (shikust) be carried away, he should be entitled to a deduction of rent. With reference to this condition of the pottah, the respondent's vakeel says that it implies a deduction on account of any deficiency. But it appears to me that I cannot depart from the specific terms of the written covenant. It is conceivable that a claim for adjustment of rent founded on diluvion might open up the entire revision of the settlement: here, however, we have no such plea; the suit is not based on diluvion, and I cannot assume that any other circumstance than diluvion was understood by the parties, at the time of the completion of the conclusive settlement, to give Mahomed Bukhtawur a title to have his jumma reduced; obviously, it was not intended that, with or without the assistance of the civil court, a measurement of the land at the option of either party would be held a valid ground for re-opening the terms of the settlement: it is enough for me to be assured that a revision was provided for on only one condition; that that condition was diluvion, and that the plea of diluvion is not now at issue.

On the other hand, I am unable to assent to the argument upon which the appellants rest their case: inasmuch as they say they were prepared to sue for the assessment of the excess land held by respondent under the second pottah: they may be held to admit that this first pottah was open to revision: but this is only a qualified admission; an admission which retains more than it resigns, and which is only available on the understanding that the whole land of both pottahs be taken to form the basis of the engagement incurred by Mahomed Bukhtawur. Besides, it appears to me, and upon this point I agree with the principal sudder ameen, that the settlements constituted by the two pottahs are independent one of the other. In terms they are totally distinct. So on the chur itself, the land of the two pottahs is distinguished, touching it would appear on one side, but apart on all other sides. By both ameens employed by the principal sudder ameen to sift the matters at issue in several suits between these parties, it was shown that the land of the second pottah greatly exceeded the land leased; one ameen showed 24 droons, the other 34 droons in excess. But I find no cause whatever to mix up the land of the second pottah with the point at issue in this suit.

Under these circumstances, I hold the plaintiff's claim to be untenable. I quash the decree of the lower court, and dismiss the suit: all costs must be borne by the respondent (plaintiff.)

PRESENT: S. BOWRING, ESQ., OFFICIATING JUDGE.

THE 6TH MAY 1850.

No. 692 of 1849.

Appeal from the decision of Mahomed Akhbur, Moonsiff of Rawojan, dated the 13th November 1849.

Goluck Chunder, (Defendant,) Appellant,

versus

Musst. Radhee, (Plaintiff,) Respondent.

THIS suit was instituted on the 19th July 1849, to recover 8 rupees, being the value of a cow, the property of plaintiff, unlawfully detained by defendant (appellant.)

It was stated for the plaintiff that she had left the village of Sultanpore for Guheera Bowanipore, and that during her absence defendant had possessed himself of the cow, for which she had originally paid 3 rupees 8 annas, which she now valued at 8 rupees.

The defendant claimed the cow as his own property, declaring that he had only made it over to the plaintiff to keep, on condition of allowing her, as is the usual practice in villages of this district, one-half of the produce; that he had originally bought it of her for 4 rupees.

Witnesses were examined on both sides.

The moonsiff, considering the evidence offered by plaintiff to be most trustworthy, decreed for her (the respondent,) ordering the defendant (appellant) to settle with her or to pay 5 rupees, at which sum he valued the cow.

The defendant appeals, repeating his assertions before the moonsiff and pointing out discrepancies in the evidence for the plaintiff (respondent.)

JUDGMENT.

The two stories cannot be reconciled, and it is only a question whose is to be believed. There are several discrepancies in the evidence offered for either party, but on the whole the plaintiff's (respondent's) tale appears to have the best proofs. I dismiss the appeal.

THE 16TH MAY 1850.

No. 95 of 1850.

*Regular Appeal from the decision of Mr. Hutchinson, Moonsiff of Putteeah,
dated the 10th January 1850.*

Komur Ali, (Plaintiff,) Appellant,

versus

Ramgopal Bhattacharge, Moomtaz Banoo, and Kullesh-ool-Rohman,
(Defendants,) Respondents.

PLAINT instituted on the 19th September 1848, for recovery of rupees 1-6, debt, and damages 4 rupees 2 annas, cost of urzy 1-4, total 5-6.

The plaintiff stated that he held as ryot 5 kanees of lakhiraj land under Mahomed Jumma, and after his death under his daughters and co-heirs, Moomtaz Banoo and Mehr-ool-Nessa. That he continued as ryot under Ramgopal Bhattacharge, to whom these co-heirs parted, at different times, with portions of their property. That in 1208 he gave a kubooleut to Ramgopal for 8 rupees and a goat, and paid at the same time to Moomtaz Banoo 2-14 for some land still belonging to her, of which 1 kanees had been received by her in exchange from Mehr-ool-Nessa. That besides the above 3 kanees, he (plaintiff) held no land of Ramgopal, but that the latter had on 11th Bhadoon 1210, attached his (plaintiff's) property, and levied rupees 6 balance due, and 1-4 expenses, on account of rent of 1209.

The defendant, Ramgopal Bhattacharge, denied having levied more than his due. He produced a kubooleut of plaintiff, dated 11th Assar 1209, for 3 kanees, 11 gundahs, 1 cowree land at a rent of 9-8, and a goat, value 12 annas, of which 1 rupee 6 annas remaining due, he attached plaintiff's property. He denied having received urz, or any other irregular demand, he also produced a kubala signed by Mehr-ool-Nessa for 11 gundahs 3 cowrees of land, dated 1208.

Moomtaz Banoo denies having collected more than her just demand from plaintiff, she still holds 8 gundahs 3 cowrees of land in the talook, besides that which she received by transfer from her sister, Mehr-ool-Nessa, 11 gundahs 3 cowrees. Kullesh-ool-Rohman did not appear.

The moonsiff decreed for defendants, considering that Ramgopal had fully proved the kubooleut, dated 11th Assar 1209, for 3 krants, 11 gundahs, 1 cowrees, and also the sale of 11 gundahs 3 cowrees by Mehr-ool-Nessa to him in 1208, while neither plaintiff nor Moomtaz Banoo had offered any proof of the previous transfer to her of the 11 gundahs 3 cowrees, her sister Mehr-ool-Nessa's property. He also remarked that Kullesh-ool-Rohman, who must have felt interested in the property of his wife Mehr-ool-Nessa, had not opposed the attachment of the property by Ramgopal.

The plaintiff appeals, repeating his assertions, and stating that Moomtaz Banoo had applied to the collector to have a stamp affixed to the deed of transfer, and that it had not been returned in time to be filed in the moonsiff's court. He also asserted the kubooleut to be a forgery.

JUDGMENT.

The question is whether plaintiff is liable for the rent of 11 gundahs 3 cowrees of land to Ramgopal Bhuttacharge or to Moomtaz Banoo. The former pleads the sale of the land to him by Mehr-ool-Nessa, and the latter the previous transfer to herself, but of this she can produce no proof. It appeared, from her own vakeel's statement, that the deed which she said was in the collector's office, had been returned to her by that officer on the 17th November nearly two months before the decision of the suit in the moonsiff's court. If the transfer was not fictitious, why was it not proved? I dismiss the appeal.

THE 16TH MAY 1850.

No. 175 of 1849.

*Regular Appeal from the decision of Syud Ahmud, Moonsiff of Deeang,
dated 17th February 1849.*

Sona Manjee, (Defendant,) Appellant,

versus

Fukeer Chand Pater, (Plaintiff,) Respondent.

THIS plaint was instituted on the 30th March 1848, for possession of a phar, or station for fishing, held at a yearly rent of 2 rupees 4 annas, possession of the said phar having been given to defendant (appellant) by order of the sessions judge under Act IV. of 1840:

	Rupees.
Value,	12 0
Costs under Act IV.	6 12

18 12

The plaintiff claimed the phar by right of purchase of Brijmohun, who, with his brother Lallmun (since dead,) had succeeded to the occupancy of the same on the death of their father, Fukeer Chand Pater, who inherited it of his father, Sona Pater.

The defendant denied any right in the plaintiff, and pleaded that, if he held a kubala from Brijmohun, it was through connivance that he (defendant) had fished there by his servants, Prem Dass and Kubbee Dass, and held moreover the pottah of Asmut Ali, the auction purchaser of the estate.

Brijmohun petitioned the court, denying that he had received the purchase money of the phar, and stating that when plaintiff obtained the kubala he (Brijmohun) must have been intoxicated.

Dewan Ali became a defendant on his own petition. He apparently merely wished to reserve his rights as zemindar, and did not appeal.

The moonsiff considered that the possession of Brijmohun's father had been proved, and also the sale to plaintiff. The sessions judge had given possession to defendants, because there was not sufficient proof of the deed of sale, but this had been registered, kubooleuts to prove possession had been produced and a roobakaree of the deputy collector. He decreed the case for plaintiff, disallowing rupees 6-12, the costs in the suit under Act IV. 1840.

The defendant Sona Manjee appeals, denying it to be proved that Brijmohun either had possession, or the right to sell the phar to plaintiff, and even supposing he had that Brijmohun denies having disposed of it, and that Dewan Ali, the zemindar, also does not allow the sale.

JUDGMENT.

The question is whether Brijmohun possessed any right in the phar, and, if so, whether he disposed of it to plaintiff (respondent) Fukeer Chand Pater. The foudjaree proceedings and the evidence of the witnesses, a kubooleut filed by Asmut Ali, leave no doubt that Brijmohun held a phar as ryot under the zemindar. The kubala, although asserted to have been obtained surreptitiously, has been registered and properly attested. I dismiss the appeal.

THE 16TH MAY 1850.

No. 96 of 1850.

Regular Appeal from the decision of Mr. Hutchinson, Moonsiff of Putteeah, dated 12th January 1850.

Rammohun Jogee, (Defendant,) Appellant,

versus

Ram Shunker, (Plaintiff,) Respondent.

PLAINT instituted on the 11th January 1849, for the recovery of rupees 8, principal, and 5-15 interest, total 13-15.

The plaintiff stated that he owned a two-third share in a tank, and the defendant the remaining third, that the tank having silted up, it was cleansed with defendants' consent in Maugh 1204, at a cost of rupees 45, the whole of which was paid by him (plaintiff,) that defendants had paid rupees 7, and repeatedly promised the balance, which still remained unpaid.

The defendant claimed one-half of the tank, and stated that when it was proposed to cleanse it, he objected on the score of poverty; and that it was agreed that he should pay as much as he could afford. That plaintiff said if he paid nothing, the tank should still be cleansed, and that this claim was brought in consequence of one he had against the plaintiff.

The moonsiff decreed the case, observing that the question of right to a half or a third of the tank was not before the court, but a mere debt, to which as to the acknowledgment of which debt by defendant, nine witnesses were brought, while his own (defendant's) witnesses in nowise improved his case. He disallowed the interest, decreasing rupees 8 only.

Defendant appeals, repeating his assertions, and adding that the action should have been brought by the parties employed on the work. That plaintiff maliciously included Ram Shurn and Kissooree in his plaint, and prevented defendant calling them as witnesses, that there was a bond not stamped, which the moonsiff had not received nor ordered to be stamped, that plaintiff should have been nonsuited.

JUDGMENT.

This trifling debt has been repeatedly acknowledged as due by defendants in presence of witnesses. An illam, although it does not appear they were concerned, was served on Ram Shurn and Kissooree as defendants, and had it even been asserted that the evidence of these parties was of importance I might have decided otherwise, on precedent of the case *Ramlochan Ghose versus Gooroo Pershad Ghose*, Sudder Reports, case 170 of 1845, 11th August 1847. As it is, there is no evidence for the defence whatever. I dismiss the appeal.

THE 17TH MAY 1850.

No. 97 of 1850.

Regular Appeal from the decision of Moulee Abdool Jubbar, Moonsiff of Esapore, dated 19th February 1850.

Deeb Chand Podar, (Plaintiff,) Appellant,

versus

Dataram and Elahee Buksh, (Defendants,) Respondents.

SUIT instituted on the 15th February 1849, for recovery of annas 6, value of 6 bamboos, the property of plaintiff, cut by defendants.

The plaintiff stated that, on the 2nd Assin 1207 M., he purchased 1 kancee, 8 gundahs, 1 cowree, 2 krants of land with ganjuesh and cheet kayut in turuff Noorjehan Begum, mouzah Dooroom, held of Elahee Buksh, at a rent of 1 rupee, 11 annas, 3 krants, for rupees 17, and re-let the same to Raudhun, the seller and former owner, as ryot. That on the land was a plot of bamboos and a nullah which silted up. That he obtained of the zemindar a chittee, promising a pottah of the incremental land, but never obtained one.

On Ramdhun's death in 1209, the land, excepting the plot of bamboos, was let by him (plaintiff) to Maughun, and during plaintiff's absence defendant cut the bamboos, for which this action is brought.

The defendant Dataram claimed the bamboos as his own, said he sowed some on the silted up nullah, of which he holds a pottah of the zemindar, that the bamboos were not in Ramdhun's talook, but on Suddharam's, whose property he (defendant) purchased, that, when formerly in dispute, a punchayet declared the bamboos to be his; that the plaintiff is one of the tehseeldars on the estate, and it is difficult to procure evidence against him.

Suddharam defendant, in his own petition, declares that he planted the bamboos and sold them with his talook to Dataram, that Ramdhun was allowed to cut the bamboos, but had no right to do so, and could convey none to plaintiff who has purchased his talook.

Elahee Buksh defendant stated that the bamboos were on waste land held under him by Ramdhun, and none by Deeb Chand, that he gave a pottah for gundahs 10 waste land, on which were the bamboos, to plaintiff, but that defendant has a pottah for the silted up nullah.

The moonsiff dismissed the suit, merely observing that plaintiff had proved no right while defendant had.

In appeal, the plaintiff repeats his assertions, claims possession of the land, and attempts to throw doubt on the impartiality of defendants' witnesses.

JUDGMENT.

This is a boundary dispute. The talook was originally purchased by three brothers, Suddharam, Ramdhun, and Dataram, and divided between them; Suddharam disposed of his share to Dataram the defendant, and Ramdhun of his to Deeb Chand, the plaintiff. A nullah silted up, and although plaintiff had a promise of the lease from the zemindar, it was subsequently given to the defendant. There is also a patch of waste land near Ramdhun's house, and it is impossible to ascertain from the contradictory statements of the witnesses whether the bamboos, the subject of the present action, grew on the waste or on the incremental land. This the moonsiff ought to have ascertained. and also whether this dispute, as asserted by defendant, was formerly settled by arbitration. I annul the moonsiff's order, and remand the case for re-trial.

THE 18TH MAY 1850.

No. 99 of 1850.

Regular Appeal from the decision of Moulvee Abdool Jubbur, Moonsiff of Esapore, dated 22nd January 1850.

Bukshee Allee and Bakur Allee, (Defendants,) Appellants,

versus

Mahomed Waris, (Plaintiff,) and Moghul Jan, (Defendant,) Respondents.

THIS suit was instituted on the 6th March 1849, for the recovery of 7 rupees, advanced for marriage ceremonies, and 25 rupees value of certain ornaments, total rupees 32.

The plaintiff stated that he agreed to marry the sister, Jyenab, of the defendants Bukshee Allee and Bakur Allee, in Chyte 1209, the ceremony to take place in Bysakh 1210 U.; and that he sent the above sum and the ornaments in part of what had been agreed on, viz., 40 rupees in cash and 60 rupees in value of jewellery; that the defendants put him off to Aughun and afterwards to Phalgoon, and that in the meantime the sister died, and he now claims the ornaments and money expended.

The defendants stated that the claim was vexatious, and intended to prevent them from bringing their action for half the dower, 200 rupees, and the expenses at the funeral with the cost of maintenance of their sister from Jyte 1209, which they stated the plaintiff was liable, for his not having fulfilled his engagement, also 2 rupees advanced to plaintiff's friends; and they claimed the ornaments as the absolute property of their sister, who, they said, had disposed of them previous to her death.

The moonsiff considered that the uqdnikah not having been performed, there was no marriage between the parties, and decreed for plaintiff, allowing 2 rupees advanced by defendant, and reducing the value of the ornaments to 24 rupees, total damages 29 rupees.

In appeal, the defendants repeat their allegations, and complain that the moonsiff decided on his own judgment without requiring the futwa of the kazeer.

JUDGMENT.

It appears from the evidence that the repeated postponement of the marriage was the act of the defendants. The uqd being necessary to constitute a marriage, (see Macnaghten's Mahomedan Law, page 93,) none had taken place between the parties. The plaintiff had, moreover, a right to the ornaments he had bestowed on his betrothed, (see page 251 as above.) I therefore dismiss the appeal.

THE 21ST MAY 1850.

No. 100 of 1850.

Regular Appeal from the decision of Moulvee Abdool Jubbur, Moonsiff of Esapore, dated 23rd January 1850.

Moulvee Mahomed Jyub Oollah, (Defendant,) Appellant,

versus

Kakim, (Plaintiff,) Respondent.

SUIT instituted on the 11th June 1843, for recovery of rupees 10-4, value of two bullocks sold, and damages to the same amount, rupees 20-8, and reversal of the order of the sale commissioner.

The plaintiff stated that Rumzan Allee, on behalf of the defendant, had seized his two bullocks for an alleged arrear of rent of rupees 14-3 for 1209 M., and sold the same through the sale commissioner on the 19th June 1848. for rupees 10-4, although the value was greater. Plaintiff denied any debt to defendant, or ever having cultivated land under him.

The defendant stated that he had purchased a talook in monzah Futtehpore, and that the amount was due on certain land held by Noor Banoo, wife of plaintiff.

The moonsiff decreed for the plaintiff, considering his case to be made out, both from the rocedad of the sale commissioner and the defendant's reply, and also because defendant had given no proof of his claim. The (plaintiff) defendant appeals, states the debts to be due to him, and that the moonsiff did not take his reply.

JUDGMENT.

The defendant seized the plaintiff's property for the alleged debt, of which he produced no proof, and on being called on by the moonsiff was unable, or unwilling to produce any. His vakeel signed the moonsiff's roobakarce, dated the 16th November, ordering three days' notice to be given: ignorance cannot therefore be pleaded. I can only dismiss the appeal.

THE 21ST MAY 1850.

No. 102 of 1850.

Regular Appeal from the decision of Mr. L. W. Hutchinson, Moonsiff of Putteeah, dated 5th February 1850.

Bindrabun and Parbutty Churn, (Plaintiffs,) Appellants,

*versus*Rajkissorce, Doomun, Munsoor Allee, Jyegopal, and Hurdyal,
(Defendants,) Respondents.

THIS suit was instituted on the 27th March 1849, to obtain an order for granting a receipt, or dakhilla, by the defendant Rajkissorce,

for rupees 2, and the reversal of the final order in a summary suit for rupees 7-6, total rupees 9, annas 6.

The plaintiffs stated that they held 2 kanees lakhiraj bazuftee land, in mouzali Dhunipore, 1 kanees the property of the defendant Rajkissoree at 2, and 1 kanees the property of Jyegopal and Hurdial defendants, but mortgaged to Rajkissoree, at 2 rupees 4 annas, total rent 4 rupees 4 annas, which Rajkissoree recovered of Parbutty Churn by summary process, for the year 1208. That in 1209, the defendants Jyegopal and Hurdial repaid the sum advanced on mortgage of their land, and acquired possession of it. That they, plaintiffs, under-let the 1 kanees belonging to Rajkissoree to Domun and paid the rent 2 rupees to him, the owner, but could obtain no dakhilla, for which they now sue, they then resigned their jote, which was given to Munsoor Allee, notwithstanding which Rajkissoree claimed rent for the 2 kanees, and obtained a decree from the deputy collector.

The defendant replied that he held 2 kanees of land in the village, 1 his hereditary property, and 1 purchased of the defendants Jyegopal and Hurdial; that he had twice before sued the plaintiff in the deputy collector's court, and recovered rent for 1208; that he never received the 2 rupees for which he is said to have refused a receipt, and that plaintiffs themselves let the land to Munsoor Allee. And Doomun filed a reply in substance the same as plaintiffs' statement.

Jyegopal and Hurdial stated that they mortgaged 1 kanees of land, their property, on which they lately repaid the mortgage, to Rajkissoree who did not return the kubala, saying it had been filed in the collector's office, but gave a farkluthee, dated 5th Bysakh 1209, but of which statement they produced no proof.

The moonsiff dismissed the case, observing that it was instituted in collusion with the mortgagee, or the plaintiffs would not have spoken so positively on the subject of repayment; that, after having been twice sued, plaintiffs should have taken receipts from both parties; and that the statements of the eye-witnesses to the alleged payment of 2 rupees, for which no receipt was given, did not agree.

The plaintiffs appeal, repeating their assertions, and alleging their case to be made out.

JUDGMENT.

Excepting three witnesses, who do not agree in their statements, the plaintiffs have offered no proof of their assertions. The defendant Rajkissoree filed a copy of the deputy collector's order of the 17th March 1838, dismissing the claim of the defendants Jyegopal and Hurdial as mortgagors of 1 kanees of land, and recognizing the defendant Rajkissoree as the owner of 2 kanees, as stated in his answer. The case is evidently brought by plaintiffs in collusion

with the mortgagers, if such they be; but no proof has been produced. I therefore dismiss the appeal.

THE 23RD MAY 1850. *

No. 104 of 1850.

*Regular Appeal from the decision of Abdool Futtah, Moonsiff of Deeng,
dated 22nd January 1850.*

Musst. Tarnee, (Defendant,) Appellant,

versus

Zuhoora Beebee, Plaintiff, Musst. Telutonia, Ramsewuk, Ramsoonder, Ramlochun, and Bowanee Churn, (Defendants,) Respondents.

PLAINT instituted on the 20th June 1849, for recovery of the value of 2 kanecs and a half, the property of the plaintiff, unlawfully distrained by defendant, with damages 32 rupees.

The plaintiff stated that she lived with her son, Sugeer Mahomed, who cultivated k. 1-2-2, in talook Ramsoonder, for which rent was regularly paid till 1209; Ramsoonder, the zemindar, died in 1210 M. S., and his two widows, Tarnee and Telutonia, defendants, succeeded to the property, about which they quarrelled; that Sugeer wished to pay, but the money was refused in consequence of the disputes of the proprietors, and on the 22nd Jeyte 1210 the defendant, Tarnee, in satisfaction of an alleged arrear of 8 rupees for 2 krants, 2 gundahs, 2 cowrees of land, attached the property of plaintiff, consisting of 2 cows and 1 calf, value 16 rupees, and took it to her own house; that the cows were not sold through the sale commissioner, who struck the case off his file, and that defendant now declares the cows to be dead.

The defendant Tarnee replied that the plaintiff and her son, Sugeer, held 1 kanec of land in talook Futtah Ali, and kanec 1-2-2 in talook Ramsoonder, at a total rent of 6-11-5; that she seized the cows for a balance due, and sent them to the sale commissioner, who made them over to a herdsman, under whose care they died; and that now she can neither get the cows nor the rent.

The moonsiff decreed for the plaintiff, because there was no proof that the plaintiff Zuhoorah and her son had more than k. 1-2-2 of land, that he does not believe that the two cows and one calf died in one day, and that, no italanamah having been issued, their attachment was illegal. He reduced the damages to rupees 15, the value of the cows.

The defendant appealed, repeating her assertions, also stating that the cows were regularly made over to the sale commissioner, and that their value was only rupees 6, or thereabout.

JUDGMENT.

The defendants attached the property in an illegal manner: no italanamah was served nor a wasilbakkee given to plaintiff. The sale commissioner denies having received the cows, and records that, though intimation of the seizure was sent to him, the defendant neither appeared at his office nor sent the distrained property, and that after an illam duly served he struck the case off his file. Under Section 8, Regulation XVII. of 1793, the defendant is responsible for all damage done to the property while under her charge, and liable therefore for the value of the cows (15 rupees as decreed by the moonsiff) which are not forthcoming, and which cannot be traced further than her possession. The appeal is dismissed.

THE 17TH MAY 1850.

No. 9 of 1849.

Regular Appeal from the decision of Moulvee Ashruff Alee Khan, Principal Sudder Ameen, dated 12th July 1849.

Ramchunder, (Defendant,) Appellant,

versus

Musst Soondree, Ramsoonder Nundee, and Maughun Dass Nundee,
(Plaintiffs,) Respondents.

THIS suit was instituted on the 27th June 1848, to recover the value of a promissory note, rupees 500, and interest thereon, total rupees 789.

The plaintiffs, the widow and two nephews of Kissen Kissore, (deceased,) stated that the deceased had purchased of Suroop Chunder Shah a tumussookh executed by defendants for rupees 500, dated the 23rd Bhadoon 1205, payable in one year.

The heirs of Suroop Chunder, defendant in the original suit, admitted the sale of the tumussookh, but denied that they had further interest in the matter.

The defendant Ramchunder filed no answer.

The principal sudder ameen decided the case *ex parte* in favor of plaintiff.

The defendant Ramchunder appealed, stating that he had been prevented attending the court by illness, that he had received only rupees 400 for a bond of 500, 100 having been deducted as interest in advance, and that the transaction was illegal.

JUDGMENT.

The principal sudder ameen appears to have acted quite correctly. The defendant (appellant) filed a mooktearnamah on the 6th September 1848, but no further papers, and on the 22nd December the vakeel was directed to file an answer in three days. The principal sudder ameen ordered the case to be decided *ex parte* on the 16th February, and on the 16th March the defendant appeared and requested to be allowed to file his answer, but the principal sudder ameen would not admit the plea of illness. The defendant urges that the witnesses, if questioned, will admit that he, defendant, received only 400 rupees, but the witnesses distinctly say that the defendant received 500 rupees in cash. I dismiss the appeal.

THE 27TH MAY 1850.

No. 10 of 1846.

Regular Appeal from the decision of Moulvee Ashruff Alee Khan, Principal Sudder Ameen, dated 14th May 1846.

Mohun Lall Sookool, purchaser, (Plaintiff,) Appellant,

versus

Abdool Mujced, Fuzl Ali, Abbas Ali, Aman Ali, Ruhmut Ali, Munnoo, Gourhurry Canongoe, Musst. Bundoo Mookhee, Peckhun Chunder, Kasisharee, Bishisharee, Hur Doss, Goluck Chunder, and Joyenaryne, auction purchaser, (Defendants,) Respondents.

THIS suit was instituted on the 16th April 1844, for possession of 1 d. 1 k. 2 g. 2 c. of land, husila and keela, with mesne profits, and interest thereon, rupees 440 8 annas.

The plaint set forth that, on the 5th Bysack 1194 M. S. the plaintiff (and appellant) Mohun Lall Sookul purchased, at a sale by the collector, the whole share of Kissen Kishore Gourhurry in turuff Sumbhooram Kanongoe, also a 10 annas portion of the share of Ramtonoo, Ramloohun, and Gopal Kissen Kanoongoes in the same estate, the mehal being at the time under butwara; that by virtue of his purchase plaintiff obtained possession, with exception of the following land, viz, in

Mouzah Gurehli,	Mouzah Ikoolkool,
D. 1-9-1-2,	K. 4-4-2,
Mouzah Nackheen,	Total of
K. 2., 6 gds.,	D. 1-15-12,

of which 14 k., 9 gds., 2 c., are the property of other shareholders, leaving 1 d., 1 k., 2 gds., 2 d., the subject of the present suit.

The defendants, Fuzl Ali, Aman Ali, Munnoo, Ruhmut Ali, and Abdool Mujced, claimed the land as their hereditary lakhiraj tenure,

stated that they were entitled to 4 droons, and had always had possession.

The other defendants did not appear in court.

The principal sudder ameen dismissed the suit, observing that the minhae papers since 1132 M. S. proved the tenure to have been in possession of defendants, and that the present measurement papers were not complete.

The plaintiff appealed. He stated that the minhae papers referred to 2 d. 1 k. of land in mouzah Naekheen, which he admitted to be the property of defendants; that from ignorance of his rights shortly after taking possession, he had been unable either in his plaint or rejoinder, to describe exactly the land to which the minhae papers referred, which error he now corrected.

The additional judge, Mr. Money, decreed the case to appellants, considering that the land belonging to defendants was situated in mouzah Naekheen only, which village was proved to have first consisted of 3 d. 5 k. 1 g. of land, and after deduction of d. 2-1, the lakhiraj of defendants of 6 d. 4 k. 1 g.

The Sudder Court was then appealed to, and in consequence of no report having been called for from the collector under Section 30, Regulation II. 1819, and Construction No. 981, the case was remanded to the zillah judge.

From the collector's report, dated 18th April 1848, little could be learned. It stated that 2 d. 1 k. were separated from the estate in 1132, and that it appeared from an order of the additional collector's, dated 1st March 1845, that of this d. 1-13-1 had been given to other parties; that, according to present measurement, 2 d. 1 k. were lakhiraj, but no particulars could be given.

An ameen was then deputed to the spot. His report is very full, and altogether in favor of the plaintiff. The report states that besides their lakhiraj land the defendants had a talook of 1 d. 15 k. 3 gs. 2 d., situated in three different villages, Gurehli, Ikoolkool, and Naekheen, in turuff Sumbhooram Canoongoe, and that for this tenure they always paid rent to the former proprietors. The numbers of the dachs of which the lakhiraj tenure and the talooks consist are given in the report.

Aman Allee, one of the defendants, alone questioned the correctness of the ameen's report.

JUDGMENT.

The point for decision is whether the land claimed by plaintiff is or is not the rent-free, or part of the rent-free tenure of the defendants. In 1126 M. S. mouzah Naekheen was found on measurement to consist of 8 d. 5 k. 1 g. of land, and in 1132 2 d. 1 k. were separated and deducted as a rent-free tenure, and the mouzah consisted thenceforth of 6 d. 4 k. 1 g. The minhae of 2 d. 1 k. can be traced down to the present time. The last measurement by Government showed d. 2-1 in mouzah

Naekheen in possession of defendants, with exception of 7 k. 1 g. 3 c. waste. On the 16th November 1838, mouzah Naekheen was ordered to be settled 6 d. 4 k. with Mohun Lall, the plaintiff in this suit, and 2 d. 1 k. with the parties in possession. No mention is made of any rent-free or minhae land in any villages of the turuff except mouzah Naekheen. The only document tendered by the defendants is a sunnud dated 5th Jaloos, signed by Nezamal Deen, for 1 droon shakee, and on the back is a note of the villages in which the land is situated; but this sunnud has never been registered, nor does it appear to have ever before been presented to any authority. The defendants have totally failed to prove possession of any lakhiraj land except the 2 d. 1 k. in mouzah Naekheen; nor in the various chittas and documents filed with the misl can traces of such other tenure or rent-free land in mouzah Gurehli and Ikoolkool be found. I decree the case to the appellant, with wassilat at the rate of 2 rupees per kanee on the hasila land (7 k. 8 g. 2 c.) with interest to the date on which he may obtain possession.

THE 29TH MAY 1850.

No. 8 of 1849.

Regular Appeal from the decision of Moulvee Ashruff Alee Khan, Principal Sudder Ameen, dated 5th July 1849.

Jyegopal Dutt, and after his death, Bishnoo Preya, his widow,
(Plaintiff,) Appellant,

versus

Musst. Radishree, widow of Hur Chunder Chowdry, deceased,
(Defendant,) Respondent.

THIS suit was instituted on the 15th July 1847, for revenue of Sicca rupees 432-3-9-2, and interest 271-1-2-2, total Sicca rupees 703, annas 4, gundahs 2, cowries 2, Company's rupees 750-2, balance of account.

The plaintiff sets forth that the defendant had, on the 2nd Poos 1196, (1834 A. D.,) granted to plaintiff a lease of certain lands, the property of her late husband, for 8 years from 1196 to 1203 M. S.; that the conditions of the lease were, that the plaintiff should advance 750 rupees for payment of the deceased husband's debts, and that he should be put in possession of the lands on engaging to pay the Government revenue, 97 rupees, 12 annas, 13 gundahs, expenses of collection, and a small allowance to the widow, and that the net collections from the estate should be applied to the liquidation of the advance, 750 rupees; that at the end of the lease a settlement of accounts should take place and any balance adjusted. The defendant engaged that the collections should be equal to the amount specified in a towzee delivered to plaintiff, and held herself responsible for loss

by death or insolvency of ryuts, assessment of rent-free land by Government, &c. The plaint then set forth that plaintiff had been unable to obtain more than partial possession of the estate; that one portion of it had through connivance and neglect of defendant been sold for arrears of Government revenue, and purchased by herself benamee; and that in consequence the sum sued for now remains due.

The defendant admitted the lease and advance of money, but stated that plaintiff had held possession of the entire estate, and that the land which had been sold by the Collector had been sold through neglect of plaintiff himself. Construction No. 898 was quoted as a bar to the present action.

The principal sudder ameen at first nonsuited the case, which was restored to the file by the judge and afterwards dismissed it, considering that the plaintiff had not made out that he had had but partial possession of the land. In appeal, the plaintiff repeats his allegations.

JUDGMENT.

According to the agreement between plaintiff and defendant, the accounts ought to have been settled in 1203 M. S. This had not been done. The plaintiff claims Company's rupees 750-2, which is evidently, from compound interest having been charged, more than he is entitled to. On the 19th January 1849, the principal sudder ameen ordered the defendant to file her proofs, which she did not do, and the principal sudder ameen dismissed the case in July following.

I consider the plaintiff entitled to a settlement of his account with the defendants, and I therefore remand the case to the lower court in order that, if after examination any balance of account may be found due to him, it may be awarded.

ZILLAH CUTTACK.

PRESENT: M. S. GILMORE, Esq., JUDGE.

THE 1ST MAY 1850.

No. 23 of 1850.

*Appeal from the decision of Mahomed Arshud, Moonsiff of Kendraparah,
dated 9th February 1850.*

Ram Chunder Booya Rah Baireegunjun Mahapater, (Defendant,) Appellant,

versus

Kumul Lochun Patsahanee, (Plaintiff,) Respondent.

CLAIM, rupees 138-1-7, principal and interest of a tumusook, dated 7th Jyte 1253 U.

The plaintiff stated that, on the date above named, the defendant borrowed from him the sum of rupees 100, to pay the arrears of revenue for which mouzah Soureah was advertised for sale, and executed the tumusook, pledging a 1 anna kismut of the said mouzah as security for its repayment in two months; but as the defendant had failed to comply with its conditions, he had brought the present action against him.

The defendant admitted borrowing the money and executing the bond, but alleged that on fifteen different occasions during the years 1254 and 1256, he had repaid to the plaintiff the sum of rupees 81-5, for which he refused to give him credit, and had sued for the whole amount.

The plaintiff denied the defendant's allegation regarding the payments. And the moonsiff, on the grounds that the defendant had failed to adduce any proof whatever in support of his assertion, and according to the conditions of the bond all payments made were to be endorsed on the back of it, decreed the claim in full, with costs.

Against the above decision the defendant appeals, stating that his vakeel colluded with the plaintiff, and gave him no intimation that his proofs had been called for; but with reference to his answer filed before the lower court, I consider this plea altogether untenable, and that the decision of the moonsiff is perfectly correct. It is therefore, ordered, that the same be confirmed, and that the appeal be dismissed, without serving notice on the respondent.

THE 1ST MAY 1850.

No. 27 of 1850.

*Appeal from the decision of Mahomed Arshud, Moonsiff of Kendraparah,
dated 18th February 1850.*

Ram Chunder Booya Rah Baireegunjun Mahapater, (Defendant,) Appellant,

versus

Poorsuttum Samul, (Plaintiff,) Respondent.

CLAIM, rupees 103-7-5, principal and interest of a tumusook, dated 27th Bysack 1256 U.

The plaintiff stated that, on the date in question, the defendant borrowed the sum of rupees 101 from him, promising to repay the same in two months, and executed the bond, pledging as security for the fulfilment of its conditions, a 1 anna kismut of mouzah Soureah.

The defendant denied the claim *in toto*, and stated that, in consequence of mouzah Soureah having been advertised for sale in execution of a decree, at the suit of the guardian of the children of the late Subulchunder Bose, on the date preceding that of the bond filed by the plaintiff, he took rupees 70 to the moonsiff of Cuttack, and applied for a month's time to pay up the balance due; but the said moonsiff told him to pay the full amount into the court of the moonsiff of Kendraparah, who was to hold the sale the following day; and he then went to Kumul Lochun Patsahanee, and asked him for the loan of rupees 60, and he sent his son to Kendraparah, telling him to advance the money on his (the defendant's) furnishing security; but on arriving at Kendraparah, he (the defendant) procured the requisite loan without giving security, and there was therefore no necessity for his borrowing from the plaintiff; and if the plaintiff's sons, Muddun Soondur Rai and Kissub Samul, were examined, the falseness of the plaintiff's statement and the correctness of his would be manifest.

The moonsiff held that the execution of the bond on the part of the defendant, who had failed to adduce any proof whatever in support of his defence, was duly proved by the attesting witnesses, and accordingly decreed the plaintiff's claim, with costs.

In appeal, the defendant states that he was in attendance at the court of the principal sudder ameen at the time the moonsiff called for his proofs, and his vakeel gave him no intimation of the same, and he was consequently unable to file any. But as upwards of two months elapsed between the date of the decree, and the time when the proofs were called for, I consider his objections inadmissible, and that the decision of the moonsiff is perfectly correct. It is therefore, ordered, that the appeal be dismissed, and the decision

of the lower court affirmed, without serving notice on the respondent.

THE 2ND MAY 1850.

No. 3 of 1850.

Appeal from the decision of Tarrakaunth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated 28th December 1849.

Ram Lochun Pal, (Plaintiff,) Appellant,

versus

Kishen Pershad Banoorjea *alias* Bundagatty, (Defendant,) Respondent.

(Joy Gopal Banoorjea, first Mozahim, and Sreenath Mullick, second Mozahim, in the court of first instance.)

CLAIM, possession of talook Daoondah, pergunnah Kumardachour, under a foreclosed deed of mortgage, dated 27th Aughun 1253 U., corresponding with 11th December 1845, with wassilat and interest from date of plaint. Suit laid at rupees 1,078-0-10.

The plaintiff stated that, on the 22nd Phalgoon 1252 U., corresponding with the 3rd March 1845, the defendant mortgaged to him the whole of his estate, talook Daoondah, in consideration of a loan of rupees 3,001, which sum he paid to the defendant in bank notes, *minus* 1 rupee cash, as detailed in the deed of mortgage, the conditions of which were that the money was to be repaid in nine months, or the estate was to become his property. But at the end of the stipulated period, the defendant, after paying the interest on the first bond, persuaded him to advance a further sum of rupees 2,000, (which was likewise paid in bank notes,) on the mortgage of the aforesaid estate, and executed a fresh deed, dated 27th Aughun 1253 U. for the total amount of rupees 5,001, payable in six months, and caused the same to be registered. And it was further provided in the deed of mortgage, that if he, the plaintiff, was unable to get possession of Daoondah in consequence of there being any other claims against it, he might claim an equivalent portion of the defendant's share of talook Baleesettee, in the Midnapore district. And as the defendant failed to perform his agreement, he petitioned the court under Section 7, Regulation XVII. 1806, to render the sale absolute; and as the defendant had neglected to pay the money within the time allowed by law, though he had granted his receipt for the notice of foreclosure served on him, he prayed that he might be put in possession, &c.

Kishen Pershad Banoorjea, defendant, contended that the document executed by him was not a *bai-bil-wafah kubalah*, or conditional deed of sale; and stated that as it was provided in the deed

executed by him, that if he sold or mortgaged talook Daoondah, the plaintiff was entitled to an equivalent portion of his share of *Baleesettee*, he should have sued for possession of it, as he, the defendant, had pledged Daoondah as security for Sree Nurain Mullick, nazir of the magistrate's court at Midnapore. He also disclaimed his receipt filed in the foreclosure case, and denied having received the full amount represented in the bond.

Joy Gopal Banoorjea, *first mozahim*, stated that the property did not belong solely to the defendant, who is his uncle, but that it was the property of Ram Doolal Banoorjea, his grandfather, and he was in consequence entitled to a share. Also that, during his minority, the defendant with the consent of his (*the mozahim's*) mother, had pledged the property as security for the Midnapore nazir. And the defendant with his *munzooree*, or consent, had mortgaged another property jointly belonging to them.

Sreenarain Mullick, *second mozahim*, filed a petition of objection, stating that the property in dispute was mortgaged by the defendant, who was his security to the magistrate of Midnapore, and could not in consequence be sold.

The plaintiff, in reply to the objection advanced respecting the property having been pledged as security for Sree Nurain Mullick, alleged that he had been dismissed from the office of nazir, and that there was no demand against the nazir, but if there had been, he would have satisfied it.

The principal sudder ameen held that the execution of the deed of mortgage, as well as the receipt for the notice of foreclosure on the part of the defendant, was fully established; but stated that the plaintiff's claim could not be decreed, because the defendant and the *first mozahim* lived together, and were the son and grandson of Ram Doolal Banoorjea, from which circumstance he was induced to believe the witnesses of the defendant, who stated that the property was acquired by Ram Doolal Banoorjea, in preference to the witnesses of the plaintiff, who deposed that the contrary was the case; and although he recorded his opinion, that he entertained strong suspicion that there was collusion between the defendant and his nephew the *first mozahim*, he dismissed the claim, and held each party responsible for his own costs.

Against the above decision the plaintiff appeals, asserting that the *molahim* Joy Gopal Banoorjea had not established his claim to share in the property.

JUDGMENT.

The principal sudder ameen admits that it is fully established, that the defendant Kishen Pershad Banoorjea executed the kuballa, and granted his receipt for the notice served on him under Section 7, Regulation XVII. 1806, prior to the foreclosure of the mortgage; and there cannot exist the slightest doubt on the subject. Moreover the two kuballas, dated the 22nd Phalgun 1252 and 27th

Aughun 1253 U. respectively, corresponding with the 3rd March and 11th December 1845, were both registered by the register of the district in which the property is situated, and on both of the kuballas is endorsed a memorandum attested by the register that Kishen Pershad Banoorjea *in propria persona* presented the documents for registry. And whereas the *mozahim*, Joy Gopal Banoorjea, failed to file a single document to show that he had any right or interest in the property in dispute, or that he ever, on any previous occasion advanced a claim to a share in it, it is distinctly stated in the two kuballas that it was the sole property of Kishen Pershad Banoorjea; and the settlement roobakaree, dated 25th March 1844, the kubooleut executed by Kishen Pershad Banoorjea of the 25th February 1845, and the kanoongoe's report, dated 25th January 1847, in every respect corroborate those documents; and the documents filed by Joy Gopal Banoorjea, instead of establishing his claim, tend to prove that the property belonged to Kishen Pershad Banoorjea; for the *mozahim* having countersigned the kuballas relating to the sale and mortgage of other *ijmalee* properties, belonging to him and Kishen Pershad, he would likewise have countersigned the kuballas relating to talook Daoondah, executed in favor of the plaintiff, if he possessed any right or interest therein. And as the plaintiff did not sue Joy Gopal Banoorjea in the first instance, and he has in no way established his right to oppose the plaintiff's claim, it is not, in my opinion, necessary that he should include him among the respondents. I therefore decree the appeal, and reverse the decision of the principal sudder ameen, and further direct that copy of this decree be forwarded to the revenue authorities, with instructions to record the appellaut as the proprietor of talook Daoondah in place of Kishen Pershad Banoorjea respondent.

THE 2ND MAY 1850.

No. 8 of 1850.

Appeal from the decision of Tarakaunth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated 25th February 1850.

Chowdhry Mahadeb Das and Soqbudra Dey, mother and guardian of Kanoochurn Das, adopted son of Basoodeb Das, deceased,
(Defendants,) Appellants,

versus

Aruth Sasmul, (Plaintiff,) Respondent.

CLAIM, possession on 8 annas share of talook Mudoopore, and a 2 annas share of certain khurreedagee bazee asamee lands, with wassilat from the date of plaint. Suit instituted in June 1846, and laid at rupees 588-13-5-16.

The whole of the particulars relating to this case will be found recorded in pages 123 to 127, of the Cuttack reports for November 1849, on the 10th of which month I reversed the judgment of the lower court, declaring that the fact of the defendants having dispossessed the plaintiff from or sued him for the rent of 6 beegahs, 12 goonths, 8 biswas of land, which, it was stipulated under a *safeenamah* and *razeenamah* (respectively executed by the plaintiff, and Pindakee Chowdhry, the father of the defendant, Hurram Chowdhry, and filed in suit No. 11031, in the court of the kazee adawlut) the plaintiff should hold free from the payment of rent, had not been proved, and directed the principal sudder ameen to investigate and decide whether the claim of the plaintiff (for the institution of which the conditions of the said *safeenamah* and *razeenamah* provided, in the event of his being disturbed in the possession of the aforesaid parcel of land,) to a share of the property sued for, was well founded or not. It is therefore only necessary to state in this place, that the fact of defendants having dispossessed the plaintiff from his rent-free land, by collecting rent on account of it, having been held by the decree of this court to be established, the principal sudder ameen, on re-investigation, in like manner held that there was no doubt that the plaintiff originally had a right to a share in the property, as the descendant of the adopted son of the former proprietor, Dytarry Chowdhry; and after calling for a *bywasta* from the law pundit, as to the extent of the rights of an adopted son, of a person who had another son, a legal heir of his own body, he, in conformity with the pundit's exposition of the law, adjudged to the plaintiff one-fourth of the property, which belonged to Dytarry Chowdhry, together with a proportionate amount of costs, and *wassilat* to be hereafter ascertained.

Against the above decision the defendants now appeal, merely asserting that they did not dispossess, or sue the plaintiff, for the rent of the land referred to in the *safeenamah* and *razeenamah*, filed in case No. 11031 of 1828; and that the land for the rent of which they sued was *paie* land. They do not attempt to deny that the plaintiff's father was the adopted son of Dytarry Chowdhry, to whom the property in dispute formerly belonged. And as the question of the defendants having collected the rent of the land, which the plaintiff was to have held rent-free, was carefully investigated, and finally disposed of by this court on the 10th of November last, and no appeal was preferred from that decision, that plea is not now open to further discussion. I moreover see no cause at present, to think differently to what I did on that occasion respecting it. It is therefore ordered, that the decision of the principal sudder ameen be affirmed, and that the appeal be dismissed without serving notice on the respondent.

THE 7TH MAY 1850.

No. 13 of 1850.

Appeal from the decision of Moonshee Gurriboollah, Moonsiff of Balasore, dated 5th January 1850.

Sham Churn Dey, (Plaintiff,) Appellant,

versus

Ruggoonath Pershad Dey, (Defendant,) Respondent.
(Chowdhry Gourmohun Das, mozahim in the original suit.)

CLAIM, rupees 266-4-11, principal and interest of a mortgage bond, dated 25th Bhadoon 1254 U.

Plaintiff stated that, on the date of the bond, the defendant, Ruggoonath Pershad Dey, borrowed from him the sum of rupees 221, promising to repay the same in one year, and pledged certain buildings, and the land on which they were erected, as security for his doing so; but he had neglected to fulfil his engagement, and he in consequence sued.

Ruggoonath Pershad Dey, defendant, replied that when Chowdhry Gunga Pershad Das took out execution of a decree against his uncle, Gourmohun Das, he sold the property in question to him, the defendant, for the sum of rupees 200, and, being unable to pay the purchase money, he executed the mortgage bond filed by the plaintiff, and caused it to be registered; but the plaintiff never paid him the money, and he was about to complain against him in the foudjaree court, for the detention of the tumusook, when he was taken ill, and had not yet recovered. He also stated that, if the plaintiff would make oath before the Jharissur Mahadeb, that he gave him the money, he would repay it.

The plaintiff replied that the defendant took the money in the presence of the register of deeds.

Chowdhry Gourmohun Das presented a petition of objection to the same effect as the answer put in by his nephew, the defendant, and stated that the houses and land were his, and were in his possession, the defendant having been unable to pay him for them.

Two of the witnesses to the tumusook deposed to its execution on the part of the defendant, but stated that they did not see the money paid to him; one said that the defendant told him that he had received it, and the other said that the plaintiff promised to deliver it after the tumusook was registered; and the third person, who attested the document, being the defendant's uncle, Chowdhry Gourmohun Das (the mozahim,) the plaintiff did not cause his evidence to be taken before the lower court, and the moonsiff in consequence dismissed the claim.

JUDGMENT.

Neither the defendant nor the mozahim denies the execution of the deed, and it is distinctly recorded therein, that the defendant had received payment of the full amount; and the document was registered in the office of register of deeds by Ruggoonath Pershad Dey in person; therefore, his subsequent denial regarding the receipt of the money can have no weight. And if there was any truth in his statement relative to the plaintiff's refusing to pay the money or return the tumusook, he would have represented the circumstance to some of the courts; or if he had been ill, as is alleged, Gour-mohun Das, his uncle, who is the real owner of the houses and land, would have complained. And if documents duly registered by the contracting parties are to be set aside, whenever the witnesses to the documents can be bought over to depose that the consideration, for which they were executed, was not paid, there would be no advantage whatever in registering. It is therefore ordered, that the appeal be decreed, and the decision of the moonsiff reversed.

The respondent will pay the appellant's costs in both courts, with interest to date of payment.

THE 8TH MAY 1850.

No. 16 of 1850.

Appeal from the decision of Moheschunder Roy, Moonsiff of Dhumnagur, dated 11th January 1850.

Chaitun Pershad Sein, (Defendant,) Appellant,

versus

Gunputtee Sahoo, (Plaintiff,) Respondent.

CLAIM, rupees 23-1-0-9 krants, principal and interest of a tumusook, dated 13th Maugh 1252 U.

The plaintiff stated that the defendant borrowed the sum of rupees 15 from his uncle, Abheeram Sahoo, on the security of Lokenath Das, and executed the bond under which he claimed; his uncle having since demised, leaving him his heir.

The defendant denied either borrowing the money or executing the bond, and stated that, on the occasion of his marriage, requiring some cloth, he, on the 18th Maugh 1252, got 7 rupees' worth for himself, and a similar quantity for Lokenath Das, from the plaintiff's uncle, who entered the purchases in his *khatta-buhee*, in their respective names; that he (defendant) paid rupees 6, on different occasions, and subsequently pledged a *bunat*, or woollen cloth, and some other articles for the loan of rupees 7, inclusive of the 1 rupee due by him for the cloth above referred to; but he only received rupees 3 out of the said sum from the plaintiff's uncle, who said he would give the remainder through the malzamin Lokenath Das, but never

did so, and he refused to return the articles pledged by defendant until Lokenath Das paid for the cloth purchased from him; and on defendant telling Lokenath Das to pay the same, and procure the release of his goods, he instigated the plaintiff to institute the present false suit against him.

Lokenath Das, the alleged security of Chaitan Pershad, the plaintiff, acknowledged judgment.

The plaintiff replied that the defendant borrowed rupees 13 from his uncle, in addition to the amount sued for, and pledged the woolen cloth and other articles as security for the repayment of the said sum, and that he had repaid no part of the first loan. He also stated that the defendant could write Persian and Bengalee, as well as Ooriah, and he had through artifice attested the bond in Ooriah.

The defendant, in his rejoinder, denied borrowing rupees 13 from the plaintiff when he pledged his *bunat*, &c., and stated that it was not customary for Bengalee kaists to sign their names in Ooriah, they always signed their names in Persian, and that he attested the the *khatta-buhee* belonging to the plaintiff's uncle in Persian, and, that he was in the habit of writing his name in that character, would be seen on a reference to other documents attested by him.

The moonsiff held that the execution of the bond was proved from the evidence of the attesting witnesses, and the fact of the amount of the loan being entered in the plaintiff's *yad-dasht khatta-buhee*; for although it appeared from Bhagbut Hurrichundun's decree case, that Narain Singh, one of the said witnesses, was deputed at the time the document is alleged to have been written to mouzah Phulpore, it was not certain that he was really there, and he decreed accordingly.

Against the above decision defendant appeals, stating that the witness, Narain Singh, who is said to have witnessed the bond, was, at the time it is alleged to have been written, absent at another place, and that the *khatta-buhee* was a forgery, &c.

JUDGMENT.

It is quite evident from the decreejaree case filed in the moonsiff's court, in which Bhugbut Hurrichundun was petitioner, that Narain Singh, one of the witnesses, who is said to have attested the bond, was not at Probakurpore on the date that the bond is alleged to have been written, but that he was deputed by the court with another peadah on the 26th Poose to cut and store some attached grain at mouzah Phulpore, and on the 14th of Maugh, the day succeeding the date of the bond, the chowkeedar of the said village took charge of the attached grain from the two peadahs, and granted his receipt for the same. And it is equally clear that the entry of the debt in the plaintiff's *khatta-buhee*, or memorandum book, is false, and has been made solely for the purpose of supporting the present claim, for on the same leaf (talputtroo) preceding the entry in question, are

entered certain sums advanced to Kasseé Puttoo and Bidia Sahoo, under dates 7th and 15th Sawun, the same being of six months later date than the loan alleged to have been made to the defendant. Besides which it appears from the records of the present case that the defendant is in the habit of writing his name in Persian, and the name of the defendant attached to the bond is in Ooriah.

Under these circumstances, I entirely distrust the genuineness of the bond, and accordingly decree the appeal, and reverse the decision of the moonsiff. The respondent will pay the appellant's costs in both courts, with interest.

THE 11TH MAY 1850.

No. 5 of 1850.

Appeal from the decision of Tarrakaunth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated 16th November 1849.

Kishen Pershad Samul, brother of Gooroo Pershad Mungraj, (one of the Defendants,) Appellant,

versus

Neelmadhub Palit, (Plaintiff,) Respondent.

CLAIM, rupees 634-13-7-10 krants, wassilat of a 6 annas share of mouzah Argul, on account of the second 8 puns of 1253, and the whole 16 puns of 1254 Umlee, with costs, and interest from date of decree.

The plaintiff stated that he purchased a six annas share of mouzah Argul, belonging to Soodaumchurn Samul, on the 23rd March 1846, when it was sold in execution of a decree of court; and that, both before and after he got possession, the defendants, Gooroo Pershad Mungraj and Kishen Pershad Samul, the nephews of the late proprietor, collected the rents of the said share for the last half of 1253 and the whole of 1254 U., with the exception of a few rupees, which he himself collected from the ryuts; and that, on his causing the property of some of the defaulting ryuts to be attached, they dispossessed the peadahs, and instigated other ryuts to state that they had paid their rents to Panoo Mhaintee ijaradar. And the said defendants, in collusion with Joykishen Roy Bukshee and Bimbador Rae, to whom they made a *benamee* transfer of a 7 annas portion of their 10 annas share in the mouzah, instituted three suits against him in the court of the moonsiff at Kendraparah for the aggregate sum of rupees 513-1-11-11 krants, alleging that they had paid the amount on three different occasions into the collectorate on account of his 6 annas share; but as it was well known to persons residing in the neighbourhood of the property that the defendants had collected the rents of the said six annas share on account of the last 8

puns of 1253, and the 16 puns of 1254, he had instituted the present suit for its recovery.

Joykishen Rae Bukshee denied the correctness of the plaintiff's statement, and observed that, as the 10 annas share belonging to Gooroo Pershad Mungraj, of which he and Bimbador Rae made a *bond fide* purchase of 7 annas, which was duly registered, was in no way connected with the plaintiff's six annas, he could not have obstructed the plaintiff in collecting his rents, and he would prove that he sued a number of the ryuts before the collector and the canoongoe, and realized his share of the rent. He also remarked that he and Gooroo Pershad Mungraj had paid the revenue of the plaintiff's six annas share of the mouzah into the collectorate, and, for the recovery of the sums paid, three suits had been instituted in the court of the moonsiff at Kendraparah, which, on the application of the plaintiff, had been removed to the court of the principal-sudder ameen.

Gooroo Pershad Mungraj, defendant, stated that the plaintiff's claim was entirely false; that he had not collected the rent of the plaintiff's six annas share either on account of 1253 or 1254; but the plaintiff had collected it himself, and granted *poutees* and *biooduns* to the ryuts through his karpurdaz, and that he had sued some of them under Regulations V. 1812 and VIII. 1831; and that the fact of the plaintiffs being in possession, was evident from the petitions filed by him before the collector and the magistrate. But, after collecting the rent, he failed to pay his share of the revenue into the collectorate, and he (defendant,) to save his own property from being sold, on three different occasions paid it for him, and had instituted suits for the recovery of the sums thus paid, against the plaintiff in the moonsiff's court at Kendraparah. He also denied having granted any *ijarah* to Panoo Mhaintee, and stated that, if Panoo Mhaintee collected the rents from the ryuts, the plaintiff should have sued him.

Kishen Pershad Samul denied the claim, and stated that the rents of his own share were collected by his brother Gooroo Pershad, he himself being a minor, and in other respects made the same answer as his brother.

The principal sudder ameen, in the first instance, dismissed the plaintiff's claim under Act XXIX. 1841, in consequence of his having failed to cause the attendance of ryuts before the ameen first deputed to enquire into the *wassilat*; and a summary appeal having been preferred by the plaintiff, in which he advanced certain charges against the ameen, the case was remanded in order that those charges might be enquired into, and, if true, another ameen appointed; but the principal sudder ameen, having apparently misunderstood the order of this court, deputed a *second ameen* to enquire into the *wassilat*, although the plaintiff failed to adduce any proof in support of his charges against the one first appointed; and on his

report to the effect that Gooroo Pershad Mungraj had collected rupees 717-0-7-15½ krants in excess of his own share of the rent for 1253 and 1254 U., the principal sudder ameen, after deducting the sum of rupees 467-1-8-11 krants, reported by the collectorate mohafiz to have been paid into the treasury by the defendant on account of plaintiff's six annas share, decreed the balance, viz. rupees 249-6-11-4½, together with a proportionate amount of costs against Gooroo Pershad Mungraj, and his brother in favor of the plaintiff, and directed him (the plaintiff) to pay the costs of the other defendants; his claim against them not having been established.

JUDGMENT.

It is not asserted by the plaintiff (respondent) that he was dispossessed from the property on account of which he claims the *wassilat*, neither has he sued for possession; on the contrary it is quite evident from the fact of his having sued some of the ryuts under Regulations V. 1812 and VIII. 1831, that he was in possession, and had other ryuts been in arrears he should in like manner have sued them; at all events, if he neglected the ordinary means of realizing his share of the rent, he has himself alone to blame. I am moreover of opinion that he did realize the rent of his share, and that he merely instituted the present suit to dispossess the appellant and his brother, by forcing the sale of their share of the property, as well as to defraud them of the sum of rupees 467, more or less, which they had paid into the collectorate on three different occasions on account of the revenue of the respondent's share, which he purposely withheld from a similar motive, and for the recovery of which the appellant's brother had instituted three separate suits in the moonsiff's court at Kendraparah, before the petition of plaint was filed by the respondent. But whether the above opinion is well founded or not, the decision of the principal sudder ameen, which is entirely based on the ameen's enquiry, relative to the collections made by the defendant on account of 1253 and 1254, (which was conducted in their absence), cannot be upheld, because it is not borne out by the records of the case. For instance, the ameen himself reports that the receipts, or *poutees*, on which his calculation is founded, do not specify on account of what share of the property they were granted; and his return showing that the defendants collected rupees 717-0-7-15½, in excess of their share of the rent of 1253 and 1254 U., is based on an estimated mofussil jumma of rupees 2,697; whereas the plaintiff himself filed accounts before the lower court, showing the mofussil jumma of those years to have amounted to rupees 4,003, and according to the latter estimate the share of the defendants amounted to rupees 2,729, in place of rupees 1,944, as per the ameen's statement. Consequently, instead of having collected rupees 717-0-7-15½, in excess of what they were entitled to, they collected rupees 340 less; and out of the sum of rupees

2,390, which the ameen reported had been collected by the defendants, the ryuts only produced receipts for rupees 537, leaving the large balance of rupees 1,853 unsupported by any trustworthy proof. It, moreover, appears from the principal sudder ameen's roobakaree of the 16th November 1849, that the plaintiff withdrew his claim against Joykishen Rae Bukshoe and Bimbador Rae, merely because the ryuts had not deposed that they were in possession, notwithstanding he previously alleged that they, in collusion with the other defendants, defrauded him of his rents, and they filed a kubal-la, dated 24th Poos 1254, in proof of their having purchased 7 annas of the 10 annas kismut, belonging to the appellant and his brother.

As regards the respondent's plea, that the appeal is inadmissible, because the appellant did not make objection to the second ameen's estimate before the lower court, I consider it altogether untenable, for the appellant and his brother defended the suit in the first instance, and when the respondent appealed against the order of the principal sudder ameen dismissing his claim, because he omitted to cause the attendance of the ryuts before the ameen to prove his claim, I remanded the case to the principal sudder ameen to ascertain whether certain charges preferred by the respondent against the ameen were well founded or not, and, if so, to depute another ameen, notwithstanding the respondent had preferred no objections before the lower court; and as it appears the respondent failed to adduce any proof of his charges before the principal sudder ameen, a second ameen should not have been deputed.

Under the above circumstances, it is hereby ordered that the appeal be decreed, and that the decision of the principal sudder ameen be reversed, and that the expenses of the appellant and his brother in both courts be paid by the respondent, with interest to the date of liquidation. And as the principal sudder ameen called for the three suits instituted by Gooroo Pershad Mungraj, the appellant's brother, in the court of the moonsiff at Kendraparah, in order that they might be investigated along with the present suit, and afterwards dismissed them before this suit was investigated, because the plaintiff failed to file his replication and proofs within six weeks; and the principal sudder ameen has admitted the justness of the claims by deducting the amount or the greater part of it from the counterclaim of the respondent, it is further ordered, that the appellants be allowed fifteen days to appeal against the orders of dismissal passed in those suits, under Construction No. 1048.

THE 30TH MAY 1850.

No. 24 of 1850.

Appeal from the decision of Moonshee Mahomed Urshud, Moonsiff of Kendraparah, dated 18th February 1850.

Taruk Punchanund Mahissur Das, (Plaintiff,) Appellant,
versus

Dutt Hurry Mhaintee and others, (Defendants,) Respondents.

CLAIM, rupees 14-10-6, the value of 42 goons of bealee dhan, and 4 bhurruns 79 goons of sarud dhan, the produce of 2 beegahs 6 goonths of land, at the rate of 32 goons per rupee, and 10 annas the price of the straw, being the crop of 1256 U., which the defendants had cut and carried away.

The defendants denied the claim, asserting that the plaintiff had no right to the land or the crop, which was the property of Dutt Hurry Mhaintee defendant, as was fully set forth in their answer to suit No. 119, instituted by the same plaintiff against them on account of the crop of 1255 U.

The moonsiff, adverting to his decision passed under date the 9th February (instant) in case No. 119, referred to by the defendants, wherein he decreed for the plaintiff, and held that the purchase of the land on the part of the plaintiff was fully established, and that Dutt Hurry Mhaintee had altogether failed to prove his alleged purchase, recorded his opinion that it was only necessary to decide which of the two parties cultivated the land on account of 1256; and although the witnesses on either side deposed in favor of their respective principals, the moonsiff gave the preference to the evidence of the witnesses on the part of the defendants, and held that the plaintiff should only have sued for the rent of the land instead of the value of the crop, and he in consequence dismissed the claim, with costs.

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JUDGMENT.

Since the moonsiff, on the 9th February, being the same month in which the above decision was passed, decreed case No. 119, instituted by the same plaintiff against the same defendants, under exactly similar circumstances, for the value of the crop of the same land for 1255, in favor of the plaintiff, on the grounds that he had established his right by purchase to the land, and his witnesses had proved that the defendants had cut the crop which the plaintiff had sowed, I am at a loss to understand how the moonsiff should have dismissed the plaintiff's claim in the present instance, and recorded his opinion that he should have sued for the rent of the land, and not the value of the crop, notwithstanding his witnesses had deposed that he cultivated the crop which the defendants carried off; and

more especially so as the defendants stated that they had no plea to offer in defence of the present action in addition to that which they had urged in their juwab in case No. 119, and they had preferred no appeal against the moonsiff's decision in the said case. It is therefore ordered, that the appeal be decreed, and that the decision of the moonsiff be reversed. The respondent will pay the appellant's expenses in both courts.

ZILLAH HOOGLHY.

PRESENT: F. W. RUSSELL, ESQ., JUDGE.

THE 8TH MAY 1850.

Case No. 290 of 1848.

Appeal from the decision of Pundit Sreeram Turkolunkar, Head Moonsiff of Hooghly, passed on the 25th July 1848.

Dodeh Manjee, (Defendant,) Appellant,

versus

Joydoyal Misre, (Plaintiff,) Respondent.

CLAIM, for the recovery of a sum of money, amounting to rupees twenty-four, annas four, being the amount of cash advanced on loan on a bond including interest.

From the papers in this case, it appears that the defendant took up the sum of rupees twenty-one, on loan under a bond, dated the 9th day of Joystee 1253 B. S., from the plaintiff, and the interest accruing thereon amounted to rupees four, annas four, thus making a total of rupees twenty-five, annas four, of which amount the defendant repaid only one rupee: on failure of repaying the balance, the plaintiff has filed this action.

The defendant, in his answer, denies the debt *in toto*, and avers that he never had any acquaintance with the plaintiff, that Ponchoo Manjee, Juggurnath, ghaut manjee, and Sonatun Manjee and others, are his, that is to say, the defendant's enemies, and that the said enemies had from enmity caused the institution of this suit through the plaintiff.

The moonsiff, considering the demand of the plaintiff proved by the witnesses who had been produced by the plaintiff, all of whom, that is to say, the witnesses produced by the plaintiff, were able to read and write, decreed the case; and the reasons given by the moonsiff for not crediting the evidence of the witnesses examined for the defendant, are because these persons are people of low caste and are of the same trade as the defendant.

It is urged by the appellant, in his appeal, that the statement given by him has been clearly established by the evidence of his witnesses, and although there are many discrepancies in the evidence of the witnesses produced by the plaintiff, the moonsiff had, without taking these points into consideration, unjustly decided the case.

The demand of the plaintiff has been clearly proved by the evidence of the witnesses, who are able to read and write; and with reference to the reasons recorded by the moonsiff, I consider his decision sound and just. I therefore reject the objections offered by the appellant, and dismiss this appeal.

Costs of this court are to be paid by each party respectively, the respondent having appeared unsummoned.

THE 8TH MAY 1850.

Case No. 287 of 1848.

Appeal from the decision of Baboo Juggobundoo Banerjee, late Moonsiff of Byedbattee, dated the 21st day of July 1848.

Goverdhun Adduck, (Defendant,) Appellant,

versus

Sheikh Mumtauz and Sheikh Moonsoff, (Plaintiffs,) and Hurchunder Mannah Talookdar, (Defendant,) Respondents.

CLAIM, for the possession of (maul rent-paying) land, and for the recovery of the amount of certain damage sustained from the loss of bamboos, laid at Company's rupees one hundred and thirty-five, annas five.

It appears from the papers in this case that Goverdhun Adduck held in farm four beegahs of garden land containing bamboos, at an annual rent of four rupees; that Goverdhun Adduck aforesaid, on the 17th day of Bysack 1241 B. S., sold the garden in question to Sheikh Shoojooddeen, the father of the plaintiffs, for the sum of rupees forty-nine; that the plaintiffs having caused the mutation of names in the sherishta of the zumeendar, continued to pay the usual rent; that in consequence of a disagreement with the ijaradar since 1253, B. S., regarding mathote, extra assessment, Goverdhun Adduck aforesaid with other defendants had forcibly cut down and carried off two hundred and fifty-six bamboos on the 25th day of Falgoon 1253 B. S., and dispossessed the plaintiffs of the land in question, in consequence of which the plaintiffs instituted this suit.

The defendant, Goverdhun Adduck, in his answer, distinctly denies the demand of the plaintiffs; and he states that the rent of the land in dispute is twelve rupees, and which amount of rent has for a long time been included in his other jumma, hence the statement of the plaintiffs that the rent of the land in question is four rupees, is unreasonable; that the plaintiffs have never been in possession of the land in dispute; that the late father of the plaintiffs was accustomed to deal in bamboos; that owing to a disagreement between him, Goverdhun Adduck, the defendant, and Sheikh Shoojooddeen, the late father of the plaintiffs, in the month of Poos 1253 B. S., regarding the bamboos, the plaintiffs in revenge instituted this suit on the strength of a fabricated bill of sale.

The answer given by the defendant, Hurchunder Mannah, is in support of the preceding defendant.

The moonsiff, considering the demand of the plaintiffs proved by the evidence of the witnesses adduced by them as well, as from the deed of sale, dakhilla (receipts,) and pottah (lease,) filed by the plaintiffs, and the reports of the nazir of the court of the moonsiff, who had been deputed to make the local investigation, decreed the case.

It is urged, in the appeal, that the exhibits filed by the plaintiffs are fabricated documents; that in the local investigation made by the established ameen, he, the said ameen, reported the rent of the land in dispute to be rupees twelve for a long period of time; to this report of the established ameen aforesaid the plaintiffs offered no objections, notwithstanding which the moonsiff decreed the case on a false report of his nazir, who had leagued with the plaintiffs.

The demand of the plaintiffs having been proved by the evidence of the witnesses produced by them, as well as by the pottah, &c., filed by them, I consider the decision of the moonsiff just and sound in this case. I therefore dismiss this appeal.

The plaintiffs, respondents, having appeared unsummoned, each party are to pay their costs respectively of this court.

THE 8TH MAY 1850.

Case No. 298 of 1848.

Appeal from the decision of Mohumud Alum, Moonsiff of Ooloobera, dated the 29th day of July 1848.

Jygeer Mullick, (Defendant,) Appellant,

versus

Lootufoolla Mullah, (Plaintiff,) Respondent.

CLAIM, for the recovery of a sum of money amounting to rupees fifty-four, annas fourteen, gundahs six, cowrees two, being the amount of cash advanced on loan on a bond including interest.

From the papers in this case it appears that the plaintiff advanced the sum of forty-seven rupees on loan to the defendant on a bond, dated the 11th day of Kartick 1253 B. S., the interest accruing thereon being rupees five, annas two, thus the two items made a total of rupees fifty-two, annas two, of which sum the defendant paid rupees two, on account of interest, and failing to pay the balance, the plaintiff instituted this action against him.

The defendant distinctly denies the debt, and states that he, the defendant, was absent from home and serving in Calcutta on the date borne on the face of the bond, as well on the days previous to that date as well as on the days subsequent to it; that the plaintiff has sued him from enmity.

The moonsiff, considering the demand of the plaintiff established by the evidence of the witnesses adduced by the said plaintiff, and the defendant having failed to substantiate his objections, decreed the case.

It is urged, in appeal, that the witnesses for the plaintiff have given contradictory evidence, and that the witnesses named by the appellant to corroborate his statement having been enticed away by the respondent, he, the appellant, repeatedly solicited the moonsiff by petition to make a local investigation in person, the houses of the appellant and the respondent being near to the cutchery of the moonsiff, and to call for a report from Cazee Moheecooddeen on the above point: the moonsiff did not pay any attention to these petitions and solicitations, but decided the case against him.

It is urged by the appellant that the moonsiff's cutchery, being very near and close to the residence of both of the parties in this case, he, the appellant, had solicited the moonsiff to make the local investigation in person and to call for a kyfeut (report) from the Cazee Moheecooddeen, this solicitation appears to me so reasonable and proper, that, to have set at rest all objections as well as the plea offered by the appellant, the moonsiff ought to have acceded to it, his (the moonsiff's) not having done so leaves, I consider, his decision incomplete. Therefore, I deem it proper and necessary to remand this case for the purpose above noticed for re-trial, hence I decree the appeal, and reverse the decision passed by the moonsiff on the 29th day of July 1848, and direct that the case be remanded to the moonsiff, with instructions to restore the case to its original number on his file, and, having paid attention to the remarks recorded in this decree, to re-try the case.

Costs for the present are to be paid by each party respectively and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 8TH MAY 1850.

Case No. 302 of 1848.

Appeal from the decision of Baboo Juggobundoo Banerjee, Moonsiff of Byedbattee, dated the 7th day of August 1848.

Myzooddeen Ostaghur, (Defendant,) Appellant,

versus

Sheikh Kunnye, (Plaintiff,) Respondent.

CLAIM to be allowed to perform certain religious rites in an asthana (mosque,) laid at Company's rupees thirty-one, annas thirteen, gundahs six.

It appears from the papers in this case that, in the mosque called Kannye Dewan Peer's Asthana, in the village Chattra, the perform-

ance of certain religious rites falls to the turn of the plaintiff, from the 1st day to the end of the seventh and a half day of each successive month, and that such has been the practice from the time of his ancestors: that the defendant, Myzooddeen Ostaghur, and others, dispossessed the plaintiff from the performance of the said religious rites, which fell to his (the plaintiff's) turn, on and for the first seven and a half days of the month of Maugh 1253 B. S., in consequence of which the plaintiff instituted this suit.

The defendant, Myzooddeen Ostaghur, in his answer, states that Sheikh Kureem, the father of the plaintiff, sold his right to the performance of the religious rites to him, the defendant, for the sum of rupees ninety-three, on the 3rd day of Kartick 1242 B. S., from which date he, the defendant, has continued in possession, being a period of more than twelve years, &c.

The answers of the defendants, Sheikh Paunchcowree, Sheikh Saboor, Sheikh Husnool, Sheikh Apil, Sheikh Mootoo, Sheikh Duf-eerooddeen, Sheikh Nuzem, and Sheikh Gholam, support the plaint.

The moonsiff, considering the demand of the plaintiff, duly proved by the evidence of the witnesses produced by the said plaintiff, and rejecting the bill of sale filed by the defendant from its suspicious appearance, it also is to be seen by the *fysallah* filed by the plaintiff that the father of the plaintiff had died previous to the date written on the face of the bill of sale filed by the defendant, he, the moonsiff, therefore decreed the case.

It is urged, in the appeal, that the witnesses examined for the plaintiff are persons of low caste and have given contradictory evidence, and the moonsiff, without causing the institution of a local investigation, unjustly decreed the case.

After the perusal of all the papers in this case, the demand of the respondent appears to me to have been clearly proved by the evidence of the witnesses produced by him, the plaintiff; moreover, the bill of sale filed by the appellant bears so suspicious an appearance that I do not believe it to be genuine. Under these circumstances, and with reference to the reasons recorded by the moonsiff, I consider his decision just and sound, therefore I dismiss this appeal, with costs.

THE 8TH MAY 1850.

Case No. 292 of 1848.

*Appeal from the decision of Mohumud Alum, Moonsiff of Ooloberea,
dated the 24th day of July 1848.*

Tarucknauth Ghose, (Defendant,) Appellant,

versus

Chuckooram Chatterjee and Madhobchunder Nundee, (Plaintiffs.)
Respondents.

CLAIM, for arrears of rent including the interest, laid at Company's rupees fourteen, annas ten, gundah one.

It appears from the papers in this case that the plaintiffs declare themselves to be the proprietors of a ten annas share of lot Gazeepore, within which the defendant holds eleven cottahs of maul (rent-paying) land, at an annual rent of rupees three, gundah one, inclusive of the mamoolie (usual) buttah. After deducting the sums already paid on account of rent from the year 1247 B. S. to 1253 B. S., an arrear of rupees thirteen, annas five, gundahs twelve, was due by the defendant: on the failure by the said defendant to pay the balance, the plaintiff filed this action.

The defendant, in his answer, contends that he does not hold any rent-paying land in lot Gazeepore, that the one beegah and fifteen cottahs of land appertaining to his dwelling house is lakhiraj (rent-free) land; of this, the plaintiffs claim, as maul (rent-paying) land, the one beegah which by the measurement of the surveyor has been proved to be nine cottahs, fourteen and a half chittacks of land attached to his sudder house, and he, the plaintiff, has falsely instituted this suit.

The moonsiff states that, from the lawazima (village) papers filed by the plaintiffs as well as from the evidence of their witnesses, the demand of the plaintiffs has been proved, and the defendant having failed to produce his witnesses, notwithstanding they had been summoned, and to deposit the fees of the ameen deputed to make the local enquiry, he therefore decreed the case.

It is urged, in the appeal, that the respondent had not filed the kuboolent (counterpart) of a lease from the appellant, nor the village accounts, to prove that the rent had been paid for the year previous to that for which the suit is instituted, in accordance with Construction No. 696, that the land claimed by the plaintiffs as maul is the lakhiraj (rent-free) property of the appellant, who had filed his taidaud, &c., to prove that fact; moreover, at the time the land in dispute was being measured by the surveyor, the plaintiffs claimed the land as maul, but, on the appellant filing a petition in the office of the deputy collector, the land in question was established to be lakhiraj (rent-free) by the decision of that officer;

that unless a suit be first instituted to establish the right of proprietorship to the land in question, an action for arrears of rent for the said land is inadmissible in a court of justice; that owing to the illness of the appellant, he, the appellant, was unable to produce his witnesses before the court of the moonsiff, and moreover, the appellant being a very poor and humble man and in bad circumstances, he had been unable to deposit the usual fees; but he had solicited the moonsiff personally to make the local investigation, to which solicitation he had not paid any attention, but unjustly decided the case.

In order to set at rest all the objections urged by the appellant in his oojoohaut, I consider this case should be remanded to the moonsiff for re-trial, and therefore I decree the appeal, and reverse the decision of the moonsiff, and order that the case be remanded to the moonsiff with instructions that he, the moonsiff, restore the case to its original number on his file, and, having referred to the remarks offered in this decree, to re-try the case.

Costs are for the present to be paid by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 8TH MAY 1850.

Case No. 279 of 1848.

Appeal from the decision of Baboo Doorgapersaud Ghose, Moonsiff of Nyaserai, dated the 8th day of July 1848.

Juggutthareenee Debea, widow of the late Nursing Deb Roy, deceased, and Oomamoe Debea, guardian of Bindoobasinee Debea, widow of the late Seetanath Roy, deceased, (Plaintiffs,) Appellants,

versus

Tareenee Thakooranee, Gourmohun Roy, Kaleepersaud Sircar, and Soodebee Dasee, widow of the late Rampersaud Sircar, deceased, (Defendants,) Respondents.

CLAIM, for the arrears of rent and for the continuation of its former rate, laid at rupees one hundred and seventy-seven, annas two, gundahs three, including interest.

It is set forth in the plaint that Nursing Deb Roy, deceased, the late husband of the plaintiff Juggutthareenee, and Seetanauth Roy, deceased, the late son of Oomamoe Debea, with the defendant Gourmohun Roy, held an ancestral putnee talook in equal moieties, being the half or an eight annas share of village Bogah, within the pergunnah called Shilampore; that, on the death of Nursing Deb Roy, the late husband of Juggutthareenee Debea, as well as after the demise of the late Seetanauth Roy, the late son of Oomamoe Debea, the three parties, that is to say, Juggutthareenee Debea,

Oomamoe Debea, and Gourmohun Roy, continued to hold in their possession the aforesaid talook; that Kaleepersaud Sircar and Rampersaud Sircar had farmed fifteen beegahs, seventeen and a half cottahs of land within the talook in question, at an annual rent of rupees thirty-eight, annas six, gundahs eight, for a long period, paying *that* rent regularly; that the defendant Tareenee Takooranee, in execution of a decree against the above mentioned Kaleepersaud Sircar and Rampersaud Sircar, secretly caused the attachment of the said fifteen beegahs, seventeen and a half cottahs of land, alleging its rent to be rupees twenty-five, for the realization of one hundred and fifty nine rupees, eleven annas, sixteen gundahs, and two cowrees, being the amount of the decree and having caused the land to be sold, she, Tareenee Takooranee, purchased the said land herself; that having, on the 11th day of August 1843, obtained a certificate of the purchase aforesaid, she continues in possession of the same, in consequence of which the plaintiffs sue for the sum of rupees one hundred and seventy-seven, annas two, gundahs three, that is to say, on account of rent allotted to their share from Srabun 1250 B. S. to the month of Poos 1254 B. S., at the rate of twenty-five rupees, nine annas, twelve gundahs, 110 9 12

Interest on ditto, 28 2 3

For the establishment of the *rate* of rent, 38 6 8

Total rupees one hundred and seventy-seven, annas two, gundahs three, 177 2 3

The defendant, Tareenee Takooranee, in her answer, states the demand of the plaintiff to be false, and that the rent of the land in question is not above rupees twenty-five, had it been thirty-eight rupees, annas six, and gundahs eight, the plaintiffs would certainly have preferred their claim, at the time the land was attached and subsequently sold, &c.

The moonsiff states that at the time of the sale the rent was stated to be rupees twenty-five, that the plaintiffs offered no objection neither previous to nor after the said sale, nor have they filed any kubooleut (counterpart deed of lease) to prove the rent was thirty-eight rupees, annas six, gundahs eight; that the lawazima (village papers) filed by the plaintiffs are written on old paper with fresh ink. Under these circumstances the moonsiff decreed the case to the extent of rupees seventy, annas thirteen, gundahs six, cowrees two, against the defendant Tareenee Takooranee.

It is urged, in appeal, that, although the fact that the rate of the rent had been rupees thirty-eight, annas six, gundahs eight, had been clearly established by the lawazima, or village papers, filed by the appellants and the six witnesses produced by them, nevertheless the moonsiff had unjustly decreed the case, fixing the rent at rupees twenty-five.

The appellants have not filed the ryot's kubooleut (counterpart of a lease) to prove the fact of the alleged jumma being rupees

thirty-eight, annas six, gundahs eight, and the genuineness of the lawazima papers (village accounts) for certain years, filed by the appellant, appears very doubtful. Under these circumstances, and with reference to the reasons recorded by the moonsiff, I consider the decision passed by the moonsiff on the 8th day of July 1848 in this case just and sound; therefore, rejecting the objections urged by the appellant, I dismiss this appeal, with costs.

THE 8TH MAY 1850.

Case No. 272 of 1848.

*Appeal from the decision of Mohymud Yabsannul Ghunnee, Moonsiff
of Jehanabad, dated the 29th day of June 1848.*

Sheikh Busheerooddeen, (Defendant,) Appellant,

versus

Doorgachurn Dutt Talookdar, (Plaintiff,) Respondent.

CLAIM, for the recovery of the sum of rupees two hundred and fifty, being the amount of a loan advanced on a kistbundee, or an instalment agreement, including interest.

It appears from the papers in this case that the defendant held an annual jumma of rupees one hundred and twenty-two, annas ten, gundahs fourteen, in the name of his late father, deceased, within the talook Doyah Kandha, the property of the plaintiff; that having fallen into arrears and being unable to pay the whole amount, that is to say, the sum of rupees two hundred and twenty at once, the defendant entered into an agreement with the plaintiff to liquidate the total sum by the month of Maugh 1255 B. S., giving at the same time a kistbundee (deed of instalment,) bearing date the 18th day of Aughun 1248 B. S. to the plaintiff to that effect, that of the instalment, that is to say, the sum of one hundred and eighty-five rupees, which was according to the agreement to have been paid in the month of Maugh 1253 B. S., the defendant could only pay a portion, that is to say, he could only pay rupees fifty, and failing to pay the balance, that is to say, the sum of rupees one hundred and thirty-five, the plaintiff instituted a suit for rupees one hundred and eighty-two, annas ten, gundahs sixteen, including interest.

The defendant, in his answer, denies the demand of the plaintiff, and avers that he holds fifty-one beegahs of land in the talook aforesaid, at the annual rent of one hundred and fifteen rupees under a perpetual lease, which rent he regularly paid annually, but having fallen into arrears for the rent of the years 1245 B. S. and 1246, the plaintiff sued him under Regulation VII. 1799. The matter, however, was amicably settled between themselves and a balance of rupees ninety was struck as admitted against him, the defendant, of which balance, that is to say, ninety rupees, he, the defendant, paid seventy-

one rupees, thirteen annas, and eleven gundahs to the gomashtha of the plaintiff up to the year 1251 B. S., and obtained receipts, and, in fact, the sum now due to the plaintiff amounts to rupees eighteen, annas two, gundahs nine only: that should the gomashtha of the plaintiff be summoned to appear and bring the *lawazima*, (village accounts,) the truth will be established.

The moonsiff states, in his decision, that the demand of the plaintiff has been clearly proved by the evidence of the four witnesses to the deed, who are all able to read and write; that the two witnesses produced by the defendant are illiterate persons, and they are unable to state correctly what were the respective sums which he, the defendant, had repaid annually to the plaintiff, therefore no confidence could be placed on their testimony, and in consequence the moonsiff decreed the case.

It is urged, in the appeal, that he, the defendant, had solicited that an enquiry might be instituted for the purpose of ascertaining what was the true rate of the rent for which arrears were due, and for which the kistbundee deed of instalment had been given, whether at the rate of one hundred and twenty-two rupees, annas ten, gundahs fourteen, as declared by the plaintiff, or the rate of one hundred and fifteen as declared by the defendant, that the moonsiff had, without causing such an investigation to have been made, unjustly decided the case.

The objections raised by the appellant as to no enquiry having been instituted regarding the increase or decrease of the jumma, are frivolous, because in the case the point to be decided is the validity or otherwise of the deed in question, which has been proved by the four witnesses produced by the plaintiff. Under these circumstances, and with reference to the grounds recorded by the moonsiff, I consider his decision just and sound, and, rejecting the objections raised by the appellant, I therefore dismiss the appeal.

Cost to be paid by each party respectively, the respondent having appeared unsummoned.

THE 8TH MAY 1850.

Case No. 291 of 1848.

Appeal from the decision of Mohumud Alum, Moonsiff of Ooloberea, dated the 24th day of July 1848.

Sheikh Busheerooddeen, (Defendant,) Appellant,

versus

Sheebchunder Dorah, (Plaintiff,) Respondent.

CLAIM, for the recovery of the sum of rupees twenty-three, annas two, being the amount of cash advanced on loan on a bond, including interest.

It appears from the papers in this case that the defendant received the sum of rupees seventeen, on loan from the plaintiff, on a bond bearing date the 22nd day of Joystee 1252 B. S., on the condition of liquidating the same, that is to say, the bond for the sum of seventeen rupees, bearing date the 22nd day of Joystee 1252 B. S., in the following month of Maugh of the same year, that is to say, the year 1252 B. S.; the defendant having failed to perform the condition of the bond, the plaintiff instituted this suit.

The defendant appeared by his vakeel, but did not put in any answer.

The moonsiff, considering the demand of the plaintiff proved by evidence of the witnesses produced by the said plaintiff, and the fact of the defendant not having filed any answer to the suit, decreed the case.

It is urged by the appellant that he had delivered a draft of his own answer together with the wukalutnamah to his pleader and then went to his own home; but the pleader leagued with the plaintiff and did not file the answer to the plaint, in consequence of which the case was decided *ex parte*; that he, the appellant, does not know any thing of the respondent's demand, the respondent having sued him, the appellant, from enmity, on the strength of a fabricated document.

From the evidence examined for the respondent, the demand of the plaintiff has been proved; and if the pleader employed by the appellant did not file his, the defendant's, answer, having leagued, as the appellant avers, with the respondent, the responsibility rests with the pleader. Under these circumstances, and having reference to the reasons recorded by the moonsiff in his decision in this case, I consider the decision of the moonsiff just and sound, and, rejecting the objections of the appellant as frivolous, I dismiss this appeal, with costs.

THE 8TH MAY 1850.

Case No. 294 of 1848.

Appeal from the decision of Mohummud Yahaannul Ghunnee, Moonsiff of Jehanabad, dated the 25th day of July 1848.

Beycharam Paul, (Defendant,) Appellant,

versus

Lukheernarain Roy, (Plaintiff,) Respondent.

CLAIM, for the recovery of the sum of rupees one hundred and eight, annas twelve, being the amount of cash advanced on loan on a bond, including interest.

The plaint sets forth that the defendant had received the sum of rupees fifty, on loan from the plaintiff on a bond, bearing date the

25th day of Assar 1244 B. S., on the condition of the defendant repaying the amount received, with interest, in the following month of Maugh of the same year, that is to say, the year 1244 B. S.; on the failure by the defendant of complying with the condition of the bond, that is to say, on failure to repay the amount borrowed, with interest, by the month of Maugh 1244, the plaintiff instituted this suit.

The defendant distinctly denies this debt, and states that he was in the employment of the plaintiff, and in consequence of his having quitted his service, that is to say, the service of the plaintiff, he, the plaintiff, in revenge, has falsely sued him on the strength of a fabricated bond.

The moonsiff, considering the demand of the plaintiff proved by the evidence of the three witnesses, whose names are affixed to the bond, decreed the case.

It is urged, in appeal, that the three witnesses for the plaintiff being illiterate, the authenticity of the bond has not been proved: next, those witnesses are persons under the influence of the plaintiff, and moreover have given their evidence in several other cases: that the objections offered by the appellant have been established by his witnesses, and thus the moonsiff has decided this case very inconsiderately.

The three witnesses adduced by the plaintiff to prove his demand are so exceedingly illiterate, that the authenticity of the bond filed by the plaintiff has not been proved; and the bond itself is most suspicious, it appears to have been lately written on old paper. After the admission of this appeal, both parties were directed to file any further proof of which they might be in possession, beyond the evidence which they had produced in the court of the moonsiff, within eight days. The respondent did not adduce any further proof in this court to establish his claim, therefore I decree this appeal, and reverse the decision passed by the moonsiff of Jehanabad on the 25th day of July 1848, in this case. Costs of both courts to be paid by the respondent.

THE 9TH MAY 1850.

Case No. 310 of 1848.

Appeal from the decision of Mohummud Yabsannul Ghunnee, Moonisiff of Jehanabad, passed on the 13th day of August 1848.

Radhamohun Pooroheet, Anunthoram Pooroheet, Bhogobanchunder Pooroheet, and Rammoe Debea, (Plaintiffs,) Appellants,

versus

Mongola Debea, widow of the late Dookheeram Pooroheet, deceased, Ramjeewun Pooroheet, Tarrachand Pooroheet, Nokoorchand Pooroheet, (5) Koylaschunder Pooroheet, Ramdhun Pooroheet, Fuqueerdoss Pooroheet, Nundoram Pooroheet, Doorgaram Pooroheet, (10) Tarrachand Sircar, Rajeeblochun *alias* Rajoo Chowdry, Shamachurn Chowdry, Beycharam Chowdry, Dookheeram Chowdry, (15) Gooroodoss Chowdry, son of the late Mohun Chowdry, deceased, Haranund Chowdry, Birmomoe Dassee, mother of Rammissur Chowdry, a minor, Mooktaram Chowdry, Ramculpo Chowdry, (20) Komalakanto *alias* Kummul Chowdry, Bhogoban Chowdry, Chitrosein Chowdry, Gooroodoss Ghose, Gunneish Hajrah, (25) Keenoo Mundle, Juggurnath Ghose, Sreemunth Sircar, Boro Kartick Roy, Choto Kartick Roy, (30) Ononthoram Roy, Nuffer Doss Roy, Dabychurn Roy, Dirbomoe Dassee, widow of the late Sreemunth Roy, deceased, Takoordoss Roy, (35) Ramdhone Roy, Praun Roy *alias* Frankisto Roy, Gholamee Roy, Bipprodoss Roy, Sreemotee Dassee, widow of the late Thoolseeram Roy, deceased, (40) Rajaram Roy, Rammohun Roy, Purrikheet Roy, Ramkunnye Roy, Gour Roy, (45) Jadoo Koondoo, son of the late Bungsee Koondoo, deceased, Ramdhone Koondoo, Shoodharam Koondoo, and Lukhun Koondoo, (Defendants,) Respondents.

Ramsodoy Chuckerbuttee and Kartick Chuckerbuttee, (Claimants,) Respondents.

CLAIM, for the possession of a lakhiraj (rent-free) tank, &c., and a four annas share in the sacrificial rites including wasilaut, (mesne profits,) laid at Company's rupees one hundred and forty-five, annas thirteen, gundahs sixteen, cowrees two, krants two, (Company's rupees 145-13-16-2-2.)

The plaint sets forth that the plaintiffs and the Pooroheet, defendants hold ancestral lakhiraj (rent-free) land, &c., and certain sacrificial rites in the villages Gopaulpore *alias* Dhoolajpore, &c. The following are the shareholders and their several divisional shares:

	Rs.	As.	G.	C.	K.
The share of the plaintiffs amounts to	0	2	13	1	1
The defendant, Ramjeeewun Pooroheet,	0	2	13	1	1
The defendants, Tarrachand Pooroheet, Nokoorchurn Pooroheet, and Koylaschunder Pooroheet,	0	2	13	1	1
Defendants Fuqueerdoss Pooroheet, Ramdhone Pooroheet, Nundoram Pooroheet, and Doorgaram Pooroheet,	0	4	0	0	0
Defendant Mongola Debea, widow of the late Dookheeram Pooroheet, deceased,	0	4	0	0	0
Total,	1	0	0	0	0

all of whom have remained in uninterrupted possession of their respective shares for a length of time; that the late Dookheeram Pooroheet had three brothers, all of whom had died unmarried; Dookheeram always resided at the house of his father-in-law; that in order to keep up the worship of the idol, Dookheeram, since deceased, appointed the plaintiff, Radhamohun Pooroheet, and the late Rajchunder Pooroheet, since deceased, who was the father of the plaintiffs, Anunthoram Pooroheet and Bhogoban Pooroheet, his sons, and the father-in-law of the plaintiff, Rammoee Debea; and for their remuneration he gave them one beegah, two cottahs of every description of land, valued at rupees forty and fifty rupees, on account of the sacrificial rites, under a "neeum puttree," a deed, or indenture, dated the 5th day of Assar 1238 B. S., and the plaintiffs remained in undisputed possession for a period of thirteen years; that the Pooroheet defendants subsequently refusing to give the plaintiffs a share of the fish, and preventing them from performing religious rites, dispossessing them at the same time of the latter, that is to say, their religious rites, they, the plaintiffs, instituted this suit.

The defendant Mongola Debea, in her answer, states that Dookheeram Pooroheet, deceased, her late husband, did not give any deed nor indenture to Radhamohun Pooroheet and Rajchunder Pooroheet, and that the plaintiffs were not ever in possession of the share of her late husband; that Dookheeram, deceased, having died in the month of Bhadoon 1241 B. S., she, Mongola Debea, became possessed of the property left by him, she, Mongola Debea, engaging the defendant Fukeerchand Pooroheet to perform the sacrificial duties or rites at a salary of eight annas per month; that in the month of Bysack 1253 B. S., she, the defendant, sublet her share to the said Fukeerchand Pooroheet, Ramjeeewun Pooroheet, and Tarachand Pooroheet, at an annual rent of twelve rupees; that having declined to sublet the said share to the plaintiff, Radha-

mohun Pooroheet, who had offered her the sum of three rupees annually, he with others in revenge falsely instituted this suit on the strength of a fabricated deed or indenture.

The defendants, Ramjeeewun Pooroheet, Tarachand Pooroheet, Fukeerdoss Pooroheet, Takoordoss Roy, Dabychurn Roy, Choto Kartick Roy, Sreemunth Sircar, Haranund Chowdry, Rajeeb Chowdry, Keenoo Mundle, Tarachand Sircar, Rammissur Chowdry, Ramdhone Roy, Juggernauth Ghose, Gunneish Hajrah, Chitrosein Chowdry, Bhogoban Chowdry, and Gooroodoss Ghose, in their answers, support the answer given by the defendant Mongola Debea.

The answers given by the defendants, Nundoram Pooroheet and Ramkanye Roy, Mooktoram Chowdry, Ramculpo Chowdry, Kumulakant Chowdry, and Boro Kartick Roy, support the statement given by the plaintiff.

The claimants, Ramsodoy Chuckerbuttee and Kartick Chuckerbuttee, declare themselves to be the nephews of the late Dookheeram Pooroheet, deceased, and prefer their claims to right of inheritance.

The moonsiff dismissed the case on the following grounds, that Dookheeram Pooroheet not having left any property to his wife, it is not probable that he would give away all his property to the plaintiffs four years antecedent to his death, under the deed in question, which is not attested by any respectable witnesses, nor was the deed registered, and the witnesses for the defendant, Mongola Debea, corroborate her statement.

It is urged, in appeal, that Dookheeram gave only a small portion of his property under the deed of indenture for the performance of the religious rites, keeping the rest in his own possession, which is now enjoyed by Mongola Debea, and that the above facts have been established by the evidence of his witnesses, and if a local investigation was made, further proof would have been elicited as regards the above facts, which the moonsiff has not done, but he has decided the case on conjecture.

I do not perceive any sound reason on which to disturb the decision passed by the moonsiff in this case, on the 30th day of August 1848, and which decision appears to me both sound and just, therefore I dismiss this appeal.

Costs to be paid by each party respectively, as the respondent Mongola Debea appeared unsummoned.

THE 9TH MAY 1850.

Case No. 81 of 1850.

Appeal from the decision of Baboo Muddungopaul Shome, Moonsiff of Keerpoy, passed on the 14th day of February 1850.

Roghoonath Roy, (Plaintiff,) Appellant,

versus

Rajeeblochun Chuckerbuttee, (Defendant,) Respondent.

CLAIM, for the recovery of a sum of money, amounting to rupees fifty-nine, annas twelve, gundahs sixteen, agreed to be paid by instalments, including interest.

From the papers in this case, it appears that the appellant preferred his appeal, stating that he would subsequently file his "wujoo-haut," detailed grounds for appeal; he has failed to do so, that is to say, he has failed to file his detailed grounds for appeal for a longer period than six weeks. I therefore dismiss the appeal, with costs, under the provisions of Act XXXIX. 1841.

THE 9TH MAY 1850.

Case No. 314 of 1848.

Appeal from the decision of Baboo Juggobundoo Banerjee, the Moonsiff of Byedbuttee, dated the 6th day of September 1848.

Hullodhur Bose, (Defendant,) Appellant,

versus

Bishonath Bose, (Plaintiff,) Respondent.

CLAIM, to obtain possession of a fishery, with damages sustained by the loss of fish, laid at Company's rupees fifty-six, (Company's rupees 56.)

The plaintiff sets forth that the plaintiff had taken a tank called Shaunbandha from Gobindmoe Dasse, on the 5th day of Assar 1250 B. S., under a lease of seven years: that on the 10th day of Srabun 1250 B. S., the defendants, Hullodhur Bose and others, forcibly dispossessed the plaintiff and carried off the fishes of the said tank, in consequence of which the plaintiff has instituted this suit.

The defendant denies the demand of the plaintiff, and he avers that he had rented the said tank from Gobindmoe Dasse, on the 6th day of Assar 1253 B. S., under a lease for three years, and that the plaintiff has sued him from enmity.

The answer of Gobindmoe Dasse supports the answer of the preceding defendant.

The moonsiff, considering the demand of the plaintiff to have been proved by the evidence of the witnesses adduced by him, the plain-

tiff, and by the production of the *pottah* (lease) and dakhilla (receipts) filed by him, the plaintiff, decreed the case.

It is urged, in appeal, that the authenticity of the *pottah* filed by respondent, was not proved, besides the witnesses for the plaintiff are persons of low caste and have given contradictory evidence, notwithstanding which the moonsiff has unjustly decreed the case.

I do not see any sound reason on which to disturb the decision passed by the moonsiff of Byedbattee in this case, which decision I consider decidedly sound and just, therefore I dismiss this appeal.

Costs are to be paid by each party. The respondent having appeared unsummoned.

THE 9TH MAY 1850.

Case No. 312 of 1848.

Appeal from the decision of Mohummud Alum, Moonsiff of Ooloberea, dated the 29th day of August 1848.

Madhob Mundle and Sreeram Mundle, (Defendants,) Appellants,

versus

Ramjadub Mundle, (Plaintiff,) Respondent.

CLAIM, for the recovery of a sum of money, amounting to rupees forty-two, annas two, gundahs fifteen, being the amount of cash advanced on loan on a bond, including interest.

It appears from the papers in this case that the plaintiff advanced to the defendants the sum of rupees twenty-five, on loan on a bond, dated the 6th day of Phalgun 1248 B. S.; the condition of this bond was that the defendant should repay the whole amount with interest in the following month of Chyete 1248 B. S.; the defendants paid the sum of rupees two, on the 28th day of Srabun 1249, on which date the balance due, rupees twenty-four, annas seven, including interest; and the defendants failing to perform the condition of the bond, that is to say, to repay the amount of principal money and interest due in the month of Chyete 1248 B. S. to the plaintiff, he, the plaintiff, instituted this suit for the principal and interest accruing to the date of action.

The moonsiff decreed the case *ex parte*.

The appellant, in his appeal, denies the debt, and declares the bond to be a fabricated document, and that the witnesses adduced by the plaintiff are professional witnesses, and that he, the appellant, was not served with the usual notice and proclamation.

The point to be decided in this appeal is, whether the appellant had been duly served with the usual notice and proclamation by the court of first instance, in accordance with the Circular Order of the superior court, dated March the 12th, 1841. That fact, that is to say, the fact of the notice and proclamation having been duly affixed to the door of the residence of the appellants, has been clearly

established and proved by the evidence of two witnesses who reside in the neighbourhood of the appellants. Hence, considering as I do that the decision of the moonsiff in this case to be just and sound, I dismiss this appeal, with costs.

THE 9TH MAY 1850.

Case No. 313 of 1848.

Appeal from the decision of Baboo Doorgapersaud Ghose, Moonsiff of Nyaserai, passed on the 6th day of September 1848.

Geereejapersaud Bhuttacharj, (Plaintiff,) Appellant,

versus

Grischunder Chatterjee, son of the late Seebanund Nyaruttun, deceased, (Defendant,) Respondent.

CLAIM, for the recovery of the sum of rupees two hundred and ninety-four, anna one, (Company's rupees 294-1,) being the amount of a sum of money advanced on loan on a bond, with interest.

It is set forth in the plaint that the late Seebanund Nyaruttun received from the plaintiff the sum of rupees two hundred, on loan on a bond, bearing date the 7th day of Aughun 1250 B. S., for the purpose of trading in bricks, on the condition that he, the said Seebanund Nyaruttun, would liquidate the whole amount with interest in the month of Assar 1251 B. S., that Seebanund Nyaruttun subsequently died without liquidating any part of the debt, leaving a son, Greeschunder Chatterjee, who, on the 25th day of Assin 1251 B. S., agreeably to the demand of the plaintiff, paid the sum of fifteen rupees, on account of interest through, or by the hands of one Mohesh Chuckerbuttee; and in consequence of the failure of the son, Greeschunder Chatterjee, to liquidate the balance with all interest accruing, the plaintiff instituted the suit.

The defendant, in his answer, denies the debt *in toto*, and states his late father, Seebanund Nyaruttun Bhuttacharj, was taken ill in the month of Bhadoon 1249 B. S., and died in the following month of Phalagoon of the same year, consequently it is morally impossible that he could have borrowed the money from the plaintiff and given a bond for it on the 7th day of Assar 1250 B. S., that the plaintiff, with the view of making the bond apparently valid, endorsed on the back of the said bond the name of one Mohesh Chuckerbuttee as the person through whom, or by whose hands, the sum of fifteen rupees had been paid on account of interest, and that the plaintiff has falsely sued him, the defendant, from enmity and with the intent to annoy and distress him, Greeschunder Chatterjee.

The moonsiff dismissed the case on the following grounds, that is to say, the evidence of the witnesses produced by the plaintiff to prove his demand, is so contradictory that no dependance whatever can be placed on their testimony; that the signature in the bond

alleged to be that of the debtor, appears surprising, because Seebanund Nyaruttun must have acquired the title of "*Nyaruttun*" in consequence of his abilities, and therefore a person acquainted with the sacred writings, as he was, would never have spelt his name with the letter न instead of न्, &c.

It is urged, in the appeal, that, although his witnesses, who are able to read and write, have proved his demand, the moonsiff has unjustly decided the case on conjecture.

I do not perceive any sound reason on which to disturb the decision of the moonsiff, which is lucid and good, therefore I dismiss this appeal.

Costs of this court to be paid by each party, the respondent having appeared unsummoned.

THE 9TH MAY 1850.

Case No. 315 of 1848.

Appeal from the decision of Baloo Tarulchunder Ghose, Moonsiff of Mahanund, dated the 12th day of September 1848.

Moheschunder Ghose Talookdar, (Plaintiff,) Appellant,

versus

Joygobindo Roy, Ramanauth Roy, Kistohurree Chatterjee, Nobeenchunder Roy, (5) Bhogobaun Sirdar, Bheem Chootar, Bheem Koowur, Obhoychurn Banerjee, Teenicowree Mookerjee, (10) Ramkisto Shoor Dullaul, Gungakisto Shoor Tauttee, Jodoonauth Koowur, Gopee Dassee Tautinee, Birjkisto Roy, (15) Dwarkinauth Roy, Bunmalee Chatterjee, Oodoychand Roy, Neelmonee Roy and Ramchurn Hurree, (Defendants,) Respondents, (20) Gunganarayn Roy, Tarachand Ghuttuck, Bykantonauth Ghuttuck, Kirteechunder Ghuttuck, Dookheeram Bhattacharge, (25) Muddunmohun Chatterjee, Ramkisto Banerjee, Rammohun Brimmoeharree, Bishnonauth Ghuttuck, Mudoosoodun Ghuttuck, (30) Petamber Banerjee, Sreenauth Ghuttuck, Govindchunder Mookerjee, Bulram Bhurrut Dhuraj, Nobinchunder Roy, and (35) Ramcoomar Chatterjee, (Claimants,) Respondents.

CLAIM, for the value of certain branches of peepul trees, laid at Company's rupees sixty-three (Company's rupees 63.)

It appears from the papers in this case in the talook, the property of the plaintiff, the name of which talook is Sreepore *alias* Poteba, there is a village called Nogoreparrah, on the "komaree," or waste land, of which there are five peepul trees, the branches of which, twenty-seven in number, were lopt or cut off by the defendants Joygobindo Roy and others, for the purpose of making a way to allow of the "ruth," or car of Juggurnath, belonging to the defendant Gopee Dassee Tautinee, to pass through that village: and he, Joygobindo Roy aforesaid, sold the said branches to Ramkanto Shoo Dullaul

and others, that wood of the said branches weighed five hundred and four maunds, and were of the value of sixty-three rupees, for which sum the plaintiff has instituted this suit.

The defendants, Joygobindo and Romanath Roy, in their answer, state that they have always received the branches of the trees in question whenever the wood becomes dead and dry, or happen to be broken down by storms, to prove which fact they hold certain documents; that in order to make a way to allow the rath, or car of Juggurnath, to pass along, the small and thin branches of nine peepul trees were lopped or cut off, four of which trees are on their (the defendants') lakhiraj, rent-free land, one tree belongs to the plaintiff, and four to other talookdars, and according to custom the defendant carried away the branches.

The answers given by the defendants Bheem Koowur, Bheem Chootar, Nobinchunder Roy, Kistohurree Chatterjee, and Bhogobaun Sirdar, support the plaintiff.

The answer given by Obhoychurn Banerjee, Teencowree Mookerjee, Ramkanto Shoo Dullaull, Gungakisto Shoo Tauttee, and Juddoonauth Koowur, support the answer given by the defendants, Joygobindo and Romanauth Roy.

The moonsiff dismissed the case on the following grounds: that of the five trees claimed by the plaintiff, the defendant claimed four trees, the said four trees being on their (the defendants') lakhiraj, rent-free land, hence until the right of the proprietorship be established in the first instance, the plaintiff cannot be entitled to the damages claimed by him, especially as he has not filed any document to prove and corroborate his statement, further the report filed by the ameen, who had been deputed to make the local enquiry, does not prove the demand of the plaintiff.

It is urged, in appeal, that, if the moonsiff considered the demand of the plaintiff unjust, he should have nonsuited the plaintiff, and not have dismissed the case, that the witnesses examined for the plaintiff have proved his demand, notwithstanding which the moonsiff has unjustly dismissed the case on the report of the ameen.

The evidence for the appellant in the court of the moonsiff and before the ameen deputed to make the local investigation, is so contradictory that no dependance can with safety be placed on it, and the appellant has not filed any document by which to establish his claim: moreover the statement of the defendant, as regards the usual right to the branches of the trees in dispute, has been proved by the evidence of his witnesses and the documents filed by him, the defendant. Under these circumstances, and with reference to the reasons recorded by the moonsiff, in his decision, in this case, which I consider to be sound and the decision just, therefore I dismiss this appeal.

The respondent Joygobindo having appeared unsummoned; costs of this court are to be paid by each party respectively.

THE 17TH MAY 1850.

Case No. 6 of 1848.

Appeal from the decision of Pundit Sreeram Turkolunkar, Sudder Ameen of Hooghly, dated the 16th day of May 1848.

Mongolah Dassce, widow of the late Kaleepersaud Ghose, and mother of Dwarkinath Ghose, a minor, (Defendant,) Appellant,

versus

Sheikh Abdool Hadee, Sheikh Abdool, and Kadir Sheikh Kaim Muhummud, (Plaintiffs,) Respondents.

CLAIM, for damages sustained for the loss of produce caused by the enforcement of the provisions of Regulation V. 1812, laid at Company's rupees five hundred.

The plaint sets forth that the plaintiffs do not hold any "maul" (rent-paying) land in the village named Horeehurpore; but that they *do* possess their ancestral and self-acquired lakhiraj (rent-free) land in their own and in the name of other persons, and other rent-free land held in farm from other individuals, notwithstanding which the late talookdar, Kaleepersaud Ghose, having entered into a league with Ruheemooddeen, who is an enemy of the plaintiffs, &c., falsely alleging that there is a jumma of rupees three hundred and seventy, annas twelve, in the names of the plaintiffs within the aforesaid village, he enforced the provisions of Regulation V. 1812 against the plaintiffs for rupees two hundred and eighty-three, annas ten, as the sum due up to the month of Poos 1252 B. S. (exclusive of amounts received,) and caused the attachment of the mustard seed which they had cultivated; that, at the time the talookdar applied to the ameen for the produce to be sold by a petition No. 201, the plaintiffs tendered security for the sum to the ameen, and instituted a suit in the office of the collector, and which case was, on the 15th day of April 1846, decreed in their favor by the deputy collector; that during the time the case was pending in the office of the collector, although orders were repeatedly issued for the release of the produce from attachment, the ameen having combined with the talookdar; he, the ameen, did not comply with those orders, and allowed the produce of the land cultivated by the plaintiffs to be carried off, in consequence of which they, the plaintiffs, instituted this suit.

The defendant, the late Kaleepersaud Ghose, talookdar, in his answer, stated that the plaintiffs hold a jumma of three hundred and seventy rupees, twelve annas, in the said village; that the rent up to the month of Poos 1252 B. S., amounted to rupees two hundred and seventy-eight, anna one, of which they paid only rupees three, and on failure to pay the balance he had put in force the provisions of Regulation V. 1812 against them, and attached the produce of their jumma land, on this the plaintiffs fraudulently filed a petition in the office of the collector, alleging the produce to have been that

which had been cultivated on their lakhiraj (rent-free) land, and, on their furnishing security, orders were issued to postpone the sale, when the plaintiffs, taking the law into their own hands, carried off the produce in dispute to their own house; that the plaintiffs, with the view of transforming mau (rent-paying) into lakhiraj (rent-free) land, &c., and thus to obtain a double portion of the produce, have instituted this suit.

The sudder ameen decreed the case, to the extent of rupees five hundred, against the talookdar, Kaleepersaud Ghose, and his gomashta, Jadobchunder Mookerjee, on the grounds that the fact of the talookdar and his gomashta having falsely put in force the provisions of Regulation V. 1812, against the plaintiffs, and carrying away the produce of their lakhiraj (rent-free) land, which has been proved by the exhibits filed by the plaintiffs, and by the evidence of the witnesses produced by them, the said plaintiffs, and by the report filed by the ameen who had been deputed to make the local investigation; that the witnesses examined for the defendant, the talookdar, being persons under his influence, and also being inhabitants of a different village, no dependance can be placed on their testimony, &c.

It is urged, in the appeal, that the point necessary to have been decided in this case, was whether any loss had really and actually been sustained by the attachment of the property, and not, whether the land on which the produce had been cultivated, was mau (rent-paying) or lakhiraj (rent-free,) nor has the suit been instituted under the provisions of Regulation II. 1819, consequently, the sudder ameen having, merely on the statement of the respondent, recorded that the loss sustained was the produce of lakhiraj (rent-free,) land, his decision is contrary to law; that the fact that the respondents had themselves carried and taken away the produce to their own house, has been clearly established by the witnesses adduced by the appellant; and notwithstanding all these circumstances the sudder ameen has unjustly decreed the case on conjecture.

From the evidence of the witnesses adduced by the respondents, and from the report of the ameen, and with reference to the grounds recorded by the sudder ameen in his decision, passed on the 16th day of May 1848, the demand of the respondents is clearly proved; moreover, I consider the decision of the sudder ameen is both sound and just, therefore I dismiss this appeal.

The respondent, Abdool Kadir, having appeared unsummoned; costs are to be paid by each party respectively.

THE 17TH MAY 1850.

Case No. 4 of 1848.

Appeal from the decision of Pundit Sreeram Turkolunkar, Sudder Ameen of Hooghly, dated the 8th day of May 1848.

Rajnarayn Koowur, (Plaintiff,) Appellant,

versus

Bhogobuttee Dasse and Hurrokisto Mundle, (Plaintiffs,) Arradhone Ghose Mundle, Ruttunissur Koowur, (5) Pearee Dasse, Surrisuttee Dasse, Shoomittre Dasse, Joymonee Dasse, Punchanunnee Dasse, (10) Issurchunder Paul, son of the late Treegoonachurn Paul, deceased, Judoonauth Koowur, Reybuttee Dasse, Ryemonee Dasse, daughter of the late Manick Ghose, deceased, Shosee Dasse, heiress of the late Birjmohun Koowur, deceased, (15) Rookoonee Dasse, widow of the late Govind Koowur, deceased, Buddunchunder Roy, Ramneedhee Koowur, Moteelaul Koowur, Issurchunder Koowur, (20) Tarachand Koowur, Benemadhob Koowur, Ramgopaul Koowur, Lokenauth Koowur, Bissonauth Koowur, (25) Oojulmonee Dasse, widow of the late Seetanauth Koowur, (deceased,) and Takoormonee Dasse, widow of the late Denonath Koowur, deceased, (Defendants,) Respondents.

CLAIM, for the reversal of a sale ordered under Regulation VII. 1825, and for possession of a share in a lakhiraj (rent-free) tank, laid at Company's rupees three hundred and twenty-six, annas twelve, gundahs thirteen, cowree one, duntees three, (Company's rupees 326-12-13-1-3:.)

This case was decreed by the sudder ameen on the 8th day of May 1848, and decision confirmed in appeal on the 12th day of May 1849. The appellant carried a special appeal to the Sudder Dewanny Adawlut, which Court, on the 7th day of November 1849, remanded the case for re-trial, recording at the same time as follows: "In this case the judge has not conformed to the rule laid down in Act XII. 1843, which requires that he should record *the points to be decided, the decision thereon, and the reasons for the decision.* In his decision in this case, it is merely stated that the sudder ameen decreed the case on the grounds set forth in his decision, and that the judge saw no reason to disturb that decision; but the nature of the grounds of the appeal to the judge is not given, nor are the reasons stated why those grounds are rejected. It was incumbent on the judge to give those grounds and those reasons in his decree. The special appeal is therefore admitted on this ground, and the case remanded under Regulation IX. 1831, in order that the judge may record a new decision on the case, supplying the defects above noticed."

Agreeably to the Circular Order of the Court, dated the 31st of August 1838, each of the parties were served with the usual notice; the appellant appeared by wukulutnamah, but the respondent did not enter his appearance, although the respondent acknowledged the receipt of the said notice.

The plaintiffs state that their ancestors, Beycharam Ghose Mundle and three others, were four brothers, who having obtained two sunnuds in the year 1155 B. S., excavated an old pond called Bhattagory, in the village called Sreepore, and made a tank, measuring more or less twelve beegahs, and called Morole Pooshkurnee, and devoted it to sacred purposes, and in which tank the plaintiffs have a share of two annas, eight gundahs, three cowrees, and five duntees; that the defendant, Ruttunissur Koowur, in the execution of a decree against the defendant, Judoonauth Koowur, caused the attachment of the whole tank in dispute, alleging it to be the property of the last named individual, that is to say, Judoonauth Koowur; on this the plaintiffs preferred their claim to the tank in question, which was rejected on the 21st day of August 1844, and the tank was sold: it is for the reversal of this sale of the tank, and to obtain possession of their share, that the plaintiffs instituted this suit.

The defendant, Ruttunissur Koowur, in his answer, states that the whole of the tank in dispute belongs to the defendant, Judoonauth Koowur, who having purchased it in his own name and in that of other persons continued in the possession of the same, and in consequence he (the defendant Ruttunissur Koowur) attached and sold it in satisfaction of a decree.

The answers given by the defendants, Arradhone Ghose, Shoomittre Dasse, Joymonee Dasse, Surissuttee Dasse, Pearcee Dasse, Panchanunnee Dasse, Shosee Dasse, and Robkoonee Dasse, support the plaint.

The defendant, Rajnarayn Koowur, in his answer, states that the alleged pond Bhattagory is still in existence, and situated close to the tank in dispute, consequently the statement of the plaintiff, that the tank called Morole Pooshkurnee was made by excavating the pond Bhattagory, cannot be true, but must be false; that Beycharam Ghose and three others, as named by the plaintiff in his plaint, as being four brothers, one of whom, Kirparam Ghose, being childless, gave his own four annas share in the disputed tank to the father and uncle of the defendant Rajnarayn Koowur, because they were the grandsons of his (Kirparam Ghose's) father, under a deed of gift, dated the 11th day of Assin 1192 B. S.; that Bhaugbut Ghose, son of the late Kaleechurn Ghose, who was the younger brother of Kirparam Ghose, sold his own four annas share of the tank in dispute to Gopeemohun Koowur, who was the eldest brother of the father of the defendant Rajnarayn Koowur, on the 13th day of Poos 1207 B. S., for the sum of rupees one hundred and sixty-five, hence the defendant's father and his three uncles

being four brothers became possessed of an eight annas share in the aforesaid tank, and which share was subsequently divided among themselves, and the share allotted to each brother was two annas; that the remaining eight annas was purchased by the father of the defendant on the 22nd day of Bysack 1231 B. S., from Gooroo-persaud Ghose, Hureykisto Ghose, and Moktaran Ghose, for the sum of four hundred rupees in the name of his nephew, Gungagovind Mundle, thus becoming a possessor of a ten annas' share in the disputed tank; on his (the father of the defendant's) demise the defendant continued in possession of the same; that the plaintiffs have no right nor interest in the tank in dispute, and the tank having been sold in satisfaction of a decree passed in favor of Ruttunis-sur Koowur, the defendant, who instituted a suit under No. 54, for reversal of that sale, and the plaintiffs have subsequently instituted this suit.

The plaintiffs, in their replication, state that the Bhattagory Pooshkurnee close to the tank in dispute is connected with the talookdar's maul revenue, which was formerly let to Koochil Baugdee, &c., and at present Koosey Sirdar has the possession of it; that they, the plaintiffs, have not any thing to do with the tank.

The sudder ameen, on perusal of the nuthée of this case, together with that of No. 54, of Rajnarayn Koowur, states that the point to be decided is, whether the plaintiffs have any share in the tank in dispute or not; that, from the exhibits filed by both parties in the cases instituted by them respectively, as well as from the evidence of the witnesses produced by them, the fact that the plaintiff Hurrokisto Ghose Mundle did possess an eight gundahs, three cowrees, and five duntees share, and that the plaintiff Bhogobuttee Dassee had also a two annas share, being that share belonging to or the property of her late husband, has been clearly proved, and that the sale of those shares in satisfaction of a decree against Judoonauth Koowur is unjust; that the statement made by the defendant Rajnarayn Koowur in respect to the deed of gift has not been satisfactorily established, neither has the defendant filed the bill of sale, dated 1207 B. S.; moreover, the bill of sale bearing date the year 1231 B. S., filed by the defendant, and registered by the pergunnah kazee, has this discrepancy in it, the Hijree date of the registry does not correspond with the Bengalee date on the deed, therefore the registry appears doubtful; under these circumstances the sudder ameen decreed the case.

It is urged, in appeal: First, that the sudder ameen did not institute a local investigation respecting the tank called Bhattagory, which the appellant declares to be in existence and situated near the tank in dispute. Secondly, that it was necessary for the plaintiffs to have calculated the suit at rupees two thousand, two hundred, and thirty nine, inclusive of the value of excavating the tank, instead of which they have fraudulently estimated their demand at

rupees four hundred and forty-one, anna one, gundahs eleven, cowree one; that the sudder ameen without paying any attention to this point, decided the case for less than that sum, that is to say, for the sum of rupees three hundred and twenty-six, annas twelve, gundahs thirteen, one cowree, three duntees. Thirdly, the plaintiffs declare the tank in dispute to have been given for sacred rites; but as they have not filed any "arponnamah," document, appointing a person to an office, or delegating to an employment, the statement of the tank being dewuttur must be incorrect. Although the authenticity of the deed of gift was not proved, the fact of having received the share by gift and the holding possession of the same has been established by the evidence of the witnesses; that the bill of sale of the year 1207 B. S. has also been proved; that the bill of sale for the year 1231 B. S. was registered on the 9th day of Joystee of the same year, but the kazeer had inadvertently dated it the 20th day of Suffer 1239 Hijree, &c.

In order to set at rest all the objections raised by the appellant, the papers of the nuthce of the case No. 54, which had been previously preferred by the appellant, and dismissed on the 30th May 1846, under the provisions of Act XXIX. 1841, was this day produced by the record keeper agreeably to order; and after a careful perusal of the exhibits filed by the appellant in the said case No. 54, and all the papers of this case, I dismiss this appeal, with costs. The reasons for this decision are as follows:—First, the facts that the plaintiff Hurrokisto Mundle having an eight gundahs, three cowrees, and five duntees share, and that the late husband of the plaintiff, Bhogobuttee Dasseer, having also possessed a two annas share in the tank in dispute, which tank had been sold in satisfaction of a decree passed in favor of Ruttunissur Koowur as the alleged property of Judoonauth Koowur, are clearly and distinctly established by the evidence of the witnesses examined by the plaintiff and by all the circumstances of the case. Secondly, the appellant states, in his answer and in his detailed grounds for appeal, that the Bhattagory tank is still in existence, and situated close or near to the tank in dispute, which the plaintiffs allege to have excavated under the sunnud of 1155 B. S., and that the sudder ameen had not caused a local enquiry to be instituted in the matter. This plea is not of any avail to the appellant, because, if the said sunnud did not belong to the tank in dispute, how can the appellant declare that his ancestors had received from the ancestors of the respondents, some shares in it, the said tank in dispute, by gift, and some shares in it, the tank aforesaid, by purchase? Moreover the plaintiffs state, in their replication, that the other Bhattagory tank is connected with the talookdar's maul land and farmed to ryots, hence under these circumstances a local investigation was quite unnecessary as far as regards the Bhattagory tank. Thirdly, the plea of the appellant in regard to the loss of stamp fees is inadmissible, because the plaintiff having

instituted his suit to continue in possession of the tank in dispute, assuming the value at eighteen times the amount of the annual rent, which rent being forty rupees, eight annas per mensem is rupees 729

The value of five palm trees is 10

Total, seven hundred and thirty nine, Rs. 739

Subsequently in their supplementary plaint,
they value the tank in dispute, 1500

Total, Rs. 2239

of which the amount calculated on the share of two annas, eight gundahs, three cowrees, and five duntees, would be rupees four hundred and forty-one, one anna, eleven gundahs, and one cowree; that on the institution of a local enquiry, the tank in question is valued at one thousand and four hundred rupees (1400 rupees) which, with the amount of rupees seven hundred and thirty-nine, make a total of rupees two thousand, one hundred, and thirty nine, of which the share of the plaintiff would amount to rupees three hundred and twenty-six, annas twelve, gundahs thirteen, cowree one, duntees three, (Company's rupees 326-12-13-1-3,) hence it does not appear that the plaintiffs have undervalued their suit. Fourthly, the appellant, in his answer, states that the three essential and most important documents, regarding their rights in the tank in dispute, are a deed of gift, dated the 11th day of Assin 1192 B. S., for a four annas share; secondly, a bill of sale, dated the 13th day of Poos 1207 B. S., for a four annas share; and thirdly, a bill of sale, dated the 22nd day of Bysack 1231 B. S., for an eight annas share: he has failed to produce the bill of sale, bearing date the 13th day of Poos 1207 B. S., but he has filed the two other documents, that is to say, the deed of gift, dated the 11th day of Assin 1192 B. S., which bears a doubtful appearance, and the authenticity of which the plaintiff has failed to prove: that of the three witnesses produced to prove the last document, that is to say, the bill of sale, bearing date the 22nd day of Bysack 1231 B. S., two of them are so illiterate that they are unable either to read or write, and the evidence of the other witness, who is able to read and write, is at variance with that given by the other two witnesses, therefore no dependence can be placed on the testimony of any of them. Moreover, the appellant alleges that the bill of sale is signed by Goorooopersaud Ghose, Horeykisto Ghose, and Mokhtaram Ghose. In the deposition given by Kistochunder Ghose, one of the witnesses for the appellant, in the month of Bysack 1253 B. S., he, the deponent, saith—that the aforesaid Mokhtaram had died at the age of seventeen years, some seven or eight years previously, that is to say, previous to the date on which the deponent had given his evidence in the year 1253 B. S.; this on calculation it will be seen that the said Mokhtaram (whose must have been about three or four years of age at

the time of the execution of the bill of sale of 1231 B. S., hence it is impossible that he, Mokhtaram Ghose, could legally have signed the bill of sale at that age. The bill of sale, bearing date the 22nd day of Bysack 1231 B. S., is registered by the pergunnah cazee, by name Bundah Ali: on the back of this bill of sale, it is dated in the Persian language, the 20th day of Sufferool Moozuffer 1239 Hijree, corresponding with the 9th day of Joystee 1231 B. S., "a copy is kept after having affixed the seal." On referring to the chronological tables revised by Mr. J. F. M. Reid, register of the Sudder Dewanny Adawlut, it appears that the 20th day of Suffer 1239 Hijree would correspond with the 11th day of Kartick 1230 B. S., therefore the assertion of the sudder ameen that the document is doubtful, is not sufficiently strong, the document is clearly and distinctly a forgery, because had the bill of sale been genuine and the registry correct and true, it, the bill of sale, could not by any possibility have been registered previous to the existency of the deed itself, and the cazee could never, in calculating the Hijree month and year, state the 20th day of Sufferool Mozuffer 1239 Hijree to correspond with the 9th day of Joystee 1231, which ought to correspond with the 21st day of Rumzaun Hijree; nor is there any probability that the cazee would have registered the deed in the month of Rumzaun, and by mistake wrote Sufferool Moozuffer for Rumzaun. Hence the appellant and his vakeels in the court of first instance thus issuing and publishing as true, and fraudulently giving effect, or attempting to give effect to such a fabricated deed, knowing it to be a forgery, have, under the provisions of Regulation XVII. 1817, and Construction No. 1061, rendered themselves liable to punishment. Under all the foregoing circumstances, I consider the demand of the plaintiff valid, and the decision of the sudder ameen sound and just, and the bill of sale of 1231, filed by the appellant, to be a forged document. Hence I dismiss the appeal, with costs; and the appeal being evidently litigious, I fine the appellant the sum of two hundred rupees under Section 3, Regulation XIII. 1786, and I direct that a copy of this decision be placed on the file of miscellaneous cases, in order that an investigation may be instituted respecting the forgery of the bill of sale, bearing date the year 1231 B. S.

THE 21ST MAY 1850.

Case No. 3 of 1849.

Appeal from the decision of James Reily, Esq., late Principal Sudder Ameen of Hooghly, dated the 15th day of December 1848.

Ramruttun Ghose Talookdar, (Defendant,) Appellant,

versus

Ombeekachurn Mookerjee, (Plaintiff,) Buddenchunder Dutt, Ombeeka Dassee, widow of the late Mudoosoodun Dutt, deceased, Sreemoteo Dassee, Kystojeebun Ghose, and Sokhee Dassee, widow of the late Neelkummul Ghose, deceased, (Defendants,) Respondents.

CLAIM, to obtain possession of certain purchased lakhiraj (rent-free) land, with damages, laid at Company's rupees seven hundred and sixty-one, (Company's rupees 761.)

It is set forth in the plaint that the defendants Buddenchunder Dutt and others sold to the plaintiff twelve beegahs and fifteen cottahs, being a portion of their ancestral lakhiraj (rent-free) land under two separate bills of sale, that is to say, six beegahs of sallee or paddy land situated within the village Rammissurpore, &c., on the 9th day of Joystee 1235 B. S., for Sicca rupees 125 and six beegahs and fifteen cottahs of lakhiraj garden land in the aforesaid village, as indicated in the "char" of the year 1167 B. S., on the 27th day of Bhadoon 1238 B. S., for Sicca rupees one hundred and sixty-five,..... 165

Total Sicca rupees two hundred and ninety, Sicca rupees ... 290
That the plaintiff accordingly continued in the possession of this property until the month of Poos 1240 B. S., in which month the defendant Ramruttun Ghose talookdar, through his gomashtha manager, Kystojeebun Ghose and others, having taken from the ryots a portion of the paddy sown on the first named land, and realized the rent of the last named land from the ryots, dispossessed the plaintiff of the aforesaid property: he, the plaintiff, in consequence instituted this suit.

The defendant Ramruttun Ghose talookdar, in his answer, states that the land in dispute, in the first place, is not lakhiraj, and that it has been for a long time connected with his maul (rent-paying) land, and that the rent of it has been regularly realized together with other property, and that the plaintiff has falsely instituted this suit, alleging the land to be purchased lakhiraj (rent-free) land, &c.

The defendant Buddenchunder Dutt, in his answer, states that the land in dispute was his ancestral lakhiraj property, and declares to having sold the same to the plaintiff, under two separate

kuballas (bills of sale,) and also to having made over the char of the year 1171 B. S., respecting the said land, to the plaintiff.

This case was referred to the collector for report; and the plaintiff having failed to file the documents called for from him, the deputy collector, Baboo Ramapersaud Roy, struck the case off the file, and returned the nuthee of the case. It appears that the plaintiff subsequently came before the court of the principal sudder ameen, and filed certain documents, stating that his "mokhtear" had not apprised the plaintiff that the said documents had been required by the deputy collector. The principal sudder ameen having received and admitted the documents in question, re-forwarded the case to the collector for his report. The collector, in his report, dated the 15th day of April 1844, states that, although the defendant talookdar declares the disputed land to be maul, rent-paying, the talookdar has not been able to produce any valid document to corroborate his assertion: that the fact of the land in dispute being the ancestral lakhiraj (rent-free) property of the individual, who sold it to the plaintiff, and had been acquired by the said vendors previous to the acquisition of the country by the British Government, has been clearly proved by the registered bills of sale, by the char bearing the signature of Mr. Mariot, and by the copy of the taidaud filed by the plaintiff, and by the evidence of the witnesses adduced by him: these witnesses also prove that the plaintiff purchased the property in question, and that he was dispossessed of it by the defendant the talookdar, hence the demand of the plaintiff is just, and the objections raised by the defendant as to the land being maul (rent-paying,) are frivolous, &c.

The late principal sudder ameen, Roy Radhagobind Shome, dismissed the case on the 16th day of December 1844, and Mr. C. T. Davidson, the additional judge, on appeal, decreed the case. The appellant then carried a special appeal to the Court of Sudder Dewanny Adawlut, which Court on the 18th day of March 1848, annulled the decisions of the lower courts, on the ground that no enquiry had been made as to the validity or otherwise of the reasons assigned by the plaintiff, for not producing his documents before the collector in the first instance, and the Court remanded the proceedings with directions that the case be restored to its original number on the file of the principal sudder ameen, who was to take evidence to the point and proceed to dispose of the case *de novo*.

James Reily, Esq., the late principal sudder ameen, decreed the case on the 15th day of December 1848, on the following grounds, that is to say, that the copy of the taidaud, dated 1209 B. S., and bills of sale, dated respectively 1235 B. S. and 1238 B. S., filed by the plaintiff, do not avail him, that is to say, avail the plaintiff, but the char bearing date the 28th day of Kartick 1171 B. S., also filed by the plaintiff, bears the signature of Mr. Mariot, and is dated the 10th day of November 1764, and would appear to be genuine.

From the date on which the taidaud was filed down to the present time, a period of forty-six years have elapsed, and it has not been shown that any rent has been levied from the land in all this time; that the defendant had not filed his or any other ryot's kuboolents, nor had he produced any jumma-wasil-bakee, he, the defendant, filed the two nuthees of thoka accounts, but even these have not been proved; that with reference to the orders of the Sudder Court, the plaintiff examined three witnesses, who proved that the mokhtear did not give the plaintiff any intimation that his documents had been called for, in short, the plaintiff subsequently filed his documents, which prove that having instituted his suit and being in possession of his documents, having them in his hands, he would not have withheld them except from not having been informed that they had been required and were called for, &c.

It is urged in the appeal that, with regard to the evidence adduced by the witnesses for plaintiff, to prove that the plaintiff had omitted to file the documents which were called for and required by the collector, in consequence of the mooktear of the plaintiff not having sent to the plaintiff any intimation on the subject, as they state in their evidence to having heard the circumstance from the plaintiff, their testimony cannot be admitted in a court of justice; moreover, in the petition filed by the plaintiff, on the 13th day of Maugh 1249 B. S., in the court of the principal sudder ameen, he stated that owing to his mokhtear having failed to inform him about the documents and the deficiency of money to deposit the usual fees, he, the plaintiff, was unable to file his documents within the limited time, hence there can be no doubt that the plaintiff was aware of the call for the documents to this point. The late principal sudder ameen did not pay any attention, but considered as valid the evidence given on hearsay; that the char alluded to in the bill of sale of 1238 B. S., filed by the plaintiff, and in his plaint is stated to be that of the year 1167 B. S., instead of filing which, the plaintiff has filed the char of another year, that is to say, of the year 1171 B. S., which from the copy of a kyfeent given by the mohurir of the Sudder Board and filed by the plaintiff, cannot be admitted as a document in favor of the land in dispute, because it is written in the char that the petition was filed under No. 1547, and two sunnuds of the same number appear to have been registered, one in favor of Syed Gurreeboollah, and the other in the name of Gholaum Nubbee, &c.

From the char bearing the signature of Mr. Mariot and other documents filed by the plaintiff, and from the evidence of the witnesses examined for him, and all the other circumstances of the case, the facts that the ancestors of the vendors to the plaintiff of the land in dispute having long enjoyed possession of it as a rent-free tenure, and that the plaintiff having become possessed of the same by purchase, and that the appellant having dispossessed the plaintiff

of it in the month of Poos 1240 B. S., have been clearly proved; that the three witnesses produced by the plaintiff to prove the reason for his, the plaintiff's, not having filed his documents in the office of the collector state that, owing to the mookhtear of the plaintiff not having sent to him, the plaintiff, any intimation on the subject, he, the plaintiff, could not file them. Under these circumstances, and for the reasons recorded by the principal sudder ameen, I consider his decision just and sound, therefore I dismiss this appeal.

The costs of this court are to be paid by each party respectively, the respondent Ombeecachurn Mookerjee having appeared unsummoned.

THE 21ST MAY 1850.

Case No. 2 of 1849.

Appeal from the decision of Pundit Sreeram Turkolunkar, Sudder Ameen of Hooghly, dated the 31st day of August 1847.

Gomaun Singh Roy, (Defendant,) Appellant,

versus

• Madhobchunder Rukheet, (Plaintiff,) Respondent.

CLAIM, for the recovery of the sum of Company's rupees four hundred and forty-one, annas eleven, gundahs four, advance on loan on a bond including interest.

The plaint sets forth that the defendant and his son, Joygopaul Singh Roy, took the sum of rupees three hundred on loan from the plaintiff on a bond, dated the 19th day of Bysack 1250 B. S.: on the failure of repayment, the plaintiff instituted this suit.

The sudder ameen decreed the case *ex parte*. Owing to the illness of the appellant, the period allowed for appeal expired: he, the defendant, subsequently applied for permission to appeal, and having proved the fact of his illness, the application was admitted on the 29th day of December 1848, in conformity with which he, the defendant, preferred this appeal; and in his "wojoohaut," detailed grounds for appeal, he, the defendant, denies the demand of the plaintiff, and states that he not having been made aware of the institution of the suit in the court of first instance, he could not file his answer.

It appears that the appellant, who resides in Hooghly, was not served with the usual notice and proclamation, and that, owing to his being a mookhtear by profession, he is always in attendance at the station of Hooghly. Under these circumstances I consider it necessary to remand the case for re-trial, in order that the answer of the appellant to the plaint and his proofs may be taken and heard. Therefore I decree this appeal, and reverse the decision of the sudder ameen passed on the 31st day of August 1847, and order that the

case be remanded to the sudder ameen, with instructions to restore the case to its original number on his file, and, having paid attention to the remarks recorded in this decree, to re-try the case.

Costs to be paid by each party respectively for the present, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 21ST MAY 1850.

Case No. 19 of 1848.

Appeal from the decision of James Reily, Esq., late Principal Sudder Ameen of Hooghly, passed on the 11th day of May 1848.

Ryekummul Daby, (Defendant,) Appellant,

versus

Ombeekapersaud Roy, (Plaintiff,) Respondent.

CLAIM, for the recovery of a sum of money, amounting to Company's rupees one thousand eight hundred and eighteen, annas twelve, advanced on loan on a bond including interest.

It appears from the papers of this case that the defendant, Ryekummul Daby, mortgaged her talook lot Kamdebore, comprising six mouzahs, to the plaintiff, for the sum of Company's rupees one thousand, four hundred, and fifty, under a registered bond dated the 16th day of Chyte 1252 B. S.; on failure of re-payment, the plaintiff instituted this suit for the recovery of Company's rupees one thousand, seven hundred and thirty-seven, anna one, cowree one, kraunt one, which includes interest, by the sale of the aforesaid talook.

The late principal sudder ameen, rejecting the plea of mortgage, decreed the case *ex parte* to the extent of rupees one thousand, eight hundred, and eighteen, annas twelve, including interest.

The appellant states that, not being aware of the institution of the suit against her, she was not able to file any answer, that the respondent had secretly caused the issue of the notice and proclamation and thus obtained an *ex parte* decree.

The case was, on the 31st day of March 1849, remanded for re-trial to the principal sudder ameen, in order that the objections raised by the appellant might be set at rest. The respondent carried a special appeal to the Court of Sudder Dewanny Adawlut, which Court, reversing the decision of the judge, sent back the case, with instructions to call upon the defendant to prove the fact that she, the defendant, had not been aware of the institution of the suit against her, and then to re-try it.

In obedience to the order of the superior court, proof was called for from the appellant, who produced three witnesses to prove that

she, the defendant, had not been served with the usual notice and proclamation.

It appears clearly from the evidence of three witnesses that the appellant, who is a resident of Chinsurah, was not duly served with the usual notice and proclamation from the court of first instance : hence I consider it necessary that the case should be sent back to the principal sudder ameen, in order that the answer of the appellant to the plaint, together with any proof she may have to adduce, may be taken and received and the case re-tried. I therefore decree this appeal, and reverse the decision passed by the late principal sudder ameen on the 11th day of May 1848, and direct that the case be remanded to the present principal sudder ameen, with instructions to restore the case to its original number on his file, and, having paid attention to the remarks recorded in this decree, to re-hear the case.

Costs are to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

ZILLAH JESSORE.

PRESENT: C. STEER, ESQ., OFFICIATING JUDGE.

THE 4TH MAY 1850.

No. 28 of 1848.

Appeal from the decision of Baboo Loknath Bose, former Second Principal Sudder Ameen of Jessore, dated the 12th August 1848.

Mr. Meares, Appellant in the suit of Moonshee Khallafut Hussain and Lutafut Hussain and others, (Plaintiffs,) Respondents,

versus

Mr. Robert Savi, Mr. J. Hills, Junior, Mr. D. Rose, and Mr. Meares, Defendants.

THIS suit was instituted on the 25th August 1845, to recover possession of certain lands belonging to the talook of the plaintiffs, with wassilat during dispossession, and the rents of the last six months of 1252.

The plaintiffs are proprietors of a talook called turruf Gurgurree, within which the defendants, who all are, or have been, proprietors or managers of an indigo factory called Gouldari, cultivate certain lands situated within a defined boundary on the east side of a khall, called Tuppagara, comprising altogether 304 beegahs 17 cottahs. The defendants, it is urged, have no title whatever to the lands, except that of forcible possession, and the plaintiffs therefore bring this suit to oust them, and to recover possession of their lands, with wassilat.

Mr. Meares, the present manager of the concern, to which the factory of Gouldari belongs, after urging three legal objections against the plaintiffs' suit, replies to the main point to the effect that one Rudder Narain Mitter, a former naib of the factory, was farmer of the turruf of Gurgurree, and, as such, gave a pottah for the lands in dispute to the factory. That one Bukkaullah, the guardian of the two first named plaintiffs, and Hiddaint Hussain, their fellow sharer, afterwards confirmed the said pottah, on the strength of which the factory has all along held, and has a right to hold, the said lands. That the plaintiffs some years ago made sundry attempts to dispossess the factory, but without success, and, at

length, finding all their endeavours useless, they agreed to the amicable adjustment of their disputes, and received from the defendants the sum of 2,002 rupees as arrears of rent to the end of 1251. But they revived their quarrel the following year, when they refused to accept the rents, and they now bring this suit, hoping, by falsely denying the genuineness of the pottah, to dispossess the defendants.

The principal sudder ameen, having overruled the objections urged in bar of the plaintiff's suit, remarks that, in his opinion, the pottah and its alleged confirmation on the part of talookdars are forgeries, and accordingly decrees possession of the disputed lands to them, with costs and wassilat from 1253, and the rents of the last six months of 1252, at the rate of the defendants' pottah, which he had previously set aside as a forgery.

JUDGMENT.

• If the pottah be really a forgery the defendants are of course rightly dispossessed; for then they are without any title. However I cannot agree with the lower court in so viewing the pottah. The presumption of its being genuine is so strong, that all the arguments raised against it are comparatively insignificant, and are but as shadows to the substance. It is plain that the lands in dispute have been for years past cultivated by the factory; reason therefore dictates, that there must have been some written engagements, ere the factory could have taken possession of such a considerable portion of the plaintiffs' talook, as that which forms the subject of litigation. The farmer of the talook was at the period when the pottah is alleged to have been given, the naib of the Gouldari factory. Now what more likely than that he should have given the pottah to his employers? The confirmation of the pottah by the representatives of the talook, is also beyond suspicion, it bears the signature of the guardian of the plaintiffs, and the seal and signature of their fellow sharer. Now allowing that a doubt may be raised in respect to the signatures, how is the seal to be set aside? Besides, the confirmation is strongly supported by the fact that in 1251, the present plaintiffs, who were then their own masters, adjusted their differences with the factory by accepting from the proprietors the back rents up to 1251. These facts carry with them, as I observed, such a weight of probability in favor of the authenticity of the pottah and the reality of its after-sanction by the talookdars (by which it virtually became their deed) as to leave not a doubt of its genuineness. Such being my opinion it only remains to enquire, whether an indefinite lease can be taken to convey to the lessee a title to indefinite possession? My opinion on this point is decidedly in favor of the claim of the factory, and so long as the proprietors continue to pay the rents agreed upon, they cannot be disturbed in their possession. I accordingly reverse the order of the lower court, and decree this appeal, with costs against the respondents.

THE 4TH MAY 1850.

No. 29 of 1848.

Appeal from the decision of Baboo Loknath Bose, former Second Principal Sudder Ameen of Jessore, dated the 16th August 1848.

Gerees Chunder, Appellant in the suit of Doorga Dibeas and Anund Mye Dibeas, (Plaintiffs,) Respondents,

versus

The Appellant, Ramdhun Das, Bhageeruttee Chowdrain, Nuffer Mundul, and Hullodhur Mundul, Defendants.

THIS suit was instituted on the 18th August 1847, to cause the sale of a jumma in execution of a decree, and to set aside a summary order of the judge, releasing the jumma in question from sale.

The plaintiffs state that they got a decree against Ramdhun Biswas, defendant, on account of a bond executed by his father, in execution of which the plaintiffs attached certain trees growing on a jote belonging to the said Ramdhun, in mouzah Manikdhec, the property of Bhageeruttee Chowdrain, on which two of the said Ramdhun's relations came forward and objected to the attachment, on the plea that the jote had been previously relinquished by Ramdhun, and that they were then in possession of it. The talookdar was called up to report in whose possession the jote was, but giving no distinct answer, the court threw out the objections, and ordered the sale to take place. The trees were accordingly sold; but as the proceeds were not sufficient to liquidate the decree in full, the plaintiffs afterwards attached the jote itself, on which the talookdar, in collusion with the said Ramdhun, came forward, and stated that the latter had relinquished the jote into her hands, and that she had installed the defendant Gerees Chunder into it. The principal sudder ameen threw out this objection; but the judge, in appeal, allowed it and released the property. The plaintiff therefore brings this suit to set aside that order on proof of the manifest collusion existing between the parties.

Bhageeruttee Chowdrain makes answer, that Ramdhun first relinquished the jote in 1242; when the defendant agreeing to reduce the jumma, Ramdhun took it back on a nine years' lease, which having expired in 1251, the defendant put in Gerees Chunder. The defendant therefore argues that the jote having been given up by Ramdhun prior even to the institution of the suit against him, it cannot now be held liable for his debts.

Gerees Chunder supports this statement.

The principal sudder ameen comments, as his custom is, at great length, on the facts of the case, and shows most clearly that the alleged relinquishment was not a *bonâ fide* transaction; and that up to the attachment of the jote, it was in the possession of the judgment

debtor, Ramdhun. He accordingly declares in favor of the plaintiffs, and decrees the liability to sale of the jote in question. In the propriety of this judgment I quite agree, and accordingly dismiss the appeal, with costs.

THE 4TH MAY 1850.

No. 30 of 1848.

Appeal from the decision of Baboo Loknath Bose, former Second Principal Sudder Ameen of Jessore, dated the 16th August 1848.

Bhageerettee Dibeas, Appellant in the suit of Doorga Dibeas and Anund Mye Dibeas, (Plaintiffs,) Respondents,

versus

The Appellant and others.

THIS is a second appeal from the decision of the principal sudder ameen given in the case No. 29, this day decided. It is only necessary to say that the appeal is dismissed, with costs, on the grounds of the judgment passed in the foregoing suit. A copy of that decision will be placed with the record of this appeal.

THE 8TH MAY 1850.

No. 2 of 1849.

Appeal against the decision of Raie Loknath Bose Bahadoor, former Second Principal Sudder Ameen of Jessore, dated the 30th December 1848.

Sheeb Chunder and others, on the demise of Teloke Chunder Roy, (Plaintiffs,) Appellants,

versus

Dhun Monee Dossea and others, on the demise of Gyan Chunder Roy, (Defendants,) Respondents.

THIS suit was brought by Teloke Chunder Roy, to succeed to the property of Myhaish Chunder Roy, deceased, as next of kin, to the exclusion of Gyan Chunder, the defendant, who asserted his prior claim as adopted son of the deceased.

The sudder ameen, Mr. Thomas, dismissed the plaint, and Mr. Bentall, the late judge, affirmed this decision, remarking that "he did not place much confidence in the evidence of each separate witness, who states he was at Benares at the time of the adoption; but from the treatment the defendant received from Myhaish Chunder, during his whole lifetime, he (Mr. Bentall) has no doubt of the intention to adopt, and the belief that the adoption would not be disputed, whatever usual ceremonies may have been omitted at the time of the adoption." "Even if it be granted,"

Mr. Bentall continues—"that the adoption was illegal according to the Hindoo law, yet as the adoption was in good faith, and has continued for so long a time, and he (the defendant) has been married as an adopted son, in the presence of the adopted father, I do not think that it can be reversed."

On special appeal to the Sudder, Mr. Tucker and Sir Robert Barlow gave their opinion—"that the judgment of Mr. Bentall was contrary to the Hindoo law, which requires the performance of certain ceremonies to constitute a legal adoption. Consequently, when a claim of adoption is set up it must be established in court that the requirements of the Hindoo law have been satisfied."

Mr. Reid remarked as follows—"I was disposed to refuse the special appeal; but now think it ought to be allowed to try the validity of the judge's *dictum* that good faith (*i. e.*, an intention *bonâ fide* to adopt) will render legal an adoption, which is illegal in consequence of the omission of some necessary condition."

The case therefore was returned for re-investigation with this order—"The Court observe that the judge, in his decision, has by no means clearly laid down the grounds on which he has come to the conclusion that the plaintiff should be dismissed. He does not distinctly say that the adoption is legal under the shasters; and yet he upholds it on the plea that it was in good faith, and continued for so long a time. The requirements of the Hindoo law and the carrying out these requirements should have been enquired into; the Hindoo law officer should have been called upon for a bewusta; and the judge's opinion should have been fully and clearly recorded on the above points."

On the case coming before Mr. James, he, on the 9th June 1848, made it over to the second principal sudder ameen for disposal, who, having called for a bewusta from the law officer as to the requirements of the law in respect to adoption, and on the credit of the witnesses, who deposed to the due observance of the required ceremonies at the time of the adoption, and considering that the defendant was all along looked upon, both by his adopted father, and by others, as the son of Myhaish Chunder, who, at his marriage, went through all the usual ceremonies and customs peculiar to the Hindoos at the marriage of their sons, and the defendant performed the funeral obsequies both of Myhaish and his wife, his parents by adoption, he thought the adoption was fully established, and accordingly dismissed the suit of the plaintiff.

JUDGMENT.

Whether the requirements of the law were observed or not at the adoption, it is impossible to say. The three witnesses produced to establish this point are not to be relied on. They say, all three of them were present with Myhaish during the time he was at Benares; now one of the witnesses, it is certain, grossly perjured himself in that it has been shown, that he was a witness to a deed

executed in this district at the time he deposes he was at Benares. This flaw, or rather this untruth, in which all three witnesses participate, entirely invalidates their testimony; and so the point, whether or not the requirements of the law were observed at the time of the adoption, is yet a matter of doubt. If it is essential in a claim of this sort, that direct evidence should be given of the due and legal observance of all the usual ceremonies, and that no claim of adoption can stand where this direct evidence is not forthcoming, then the alleged adoption in the present case falls to the ground. There is however such a chain of evidence corroborative of the alleged adoption, that the production of evidence as to the performance of the usual rights on the occasion ought not, in my opinion, to be insisted upon, but rather taken for granted. It is to be recollected that Gyan Chunder's adoption took place at his infancy, and that for 19 years he lived as Myhaish Chunder's son, the fact not being doubted or questioned by any one; add to this that the adoption took place at Benares 28 years ago, and it must be allowed that it would be very difficult for the defendant to get eye witnesses to prove his adoption and the due observance of the usual ceremonies on the occasion. It is unreasonable to expect such evidence after the lapse of such a time, and the adoption therefore must be judged of by other circumstances. Now it has been proved most satisfactorily that when Myhaish Chunder first returned from Benares, Gyan Chunder was regarded and looked upon as his adopted son. He was acknowledged as such by Myhaish, who treated him on all occasions as his son, and had him married (the plaintiff's near relations being present) in accordance with all the usual ceremonies observed by Hindoos when the marriage of a son takes place. He was called during the lifetime of his adopted father, as Myhaish's son, in documents presented in court and other public offices, and was so called by the plaintiff Teloke Chunder himself and his fellow sharers, in two papers presented by them to the Nowabad moonsiff. During the ten years (that is, from the time of Myhaish's return from Benares to his death,) that the defendant was so acknowledged and regarded, the plaintiff never raised a question or doubt as to the reality or validity of the adoption; but no sooner does death remove the only witness, the adopted father, who could probably have given the most ample proof of the adoption had it been required during his lifetime, than the adoption, never till then questioned, is flatly denied, and Gyan Chunder is challenged to give proof of a fact, in the firm faith of which his father had died, of which he himself never doubted, and which no one for 19 years had ever contradicted or disputed, but which the plaintiff himself had even helped to corroborate with his own hands, I mean by his petition to the Nowabad moonsiff.

On the above grounds, I affirm the order of the lower court, and dismiss this appeal, with costs.

THE 9TH MAY 1850.

No. 4 of 1849.

Appeal against the decision of Opinder Chunder Nyaruttun Roy Bahadur, Principal Sudder Ameen of Jessore, dated the 15th January 1849.

Deb Narain Roy, (Defendant,) Appellant,

versus

Dirbomye Dossea, widow of Bishennath Biswas, (Plaintiff,
Respondent.

THIS suit was instituted on the 14th February 1848, to recover rupees 426-10-8, being half the amount, with interest, of an advance made to the defendant on the mortgage and conditional sale of his half share of a jote jumma in mouzah Baleadanga.

The plaintiff states that the defendant, in consideration of a loan of rupees 400, mortgaged to Bishennath, her late husband, his half share of the jote in question, the condition of the mortgage being that the jote was to become the property of Bishennath, if the defendant failed to repay the loan with interest by the 25th Chyto 1242. He did not pay, and the plaintiff then took measures to foreclose the mortgage, when Burdakant came forward, and claimed to be a half sharer of the 8 annas of the jote in question. The civil court having declared him entitled to the portion claimed, and the plaintiff, having accordingly obtained, in lieu of the loan, only a 4 annas share in the property pledged, instead of half the jote, as she was led to expect, brings this action to recover from the defendant the amount of half the advance with interest.

The defendant, in answer, refers to the deed of mortgage, and says he is content that the claim be judged of by its conditions.

The principal sudder ameen gave a decree to the plaintiff, on the ground of the justness of her claim, as it appeared to him that, in the transaction with the defendant, she had been led to think that, in failure of payment of the money advanced, she would obtain an 8 annas portion of the mortgaged jote, whereas she had only obtained a 4 annas share of it.

JUDGMENT.

The mortgage deed can alone decide whether the plaintiff's claim is tenable or not. In it the defendant makes no concealment, but distinctly states that his nephew, Burdakant, is a joint sharer with him in the 8 annas of the jote in question. It was not therefore in the defendant's power to mortgage the whole half share, nor, without Burdakant's acknowledgment and approval, was such a pledge valid. In accepting such a deed, the plaintiff must have been aware that Burdakant's share was exempted from the mortgage; and as, by the terms of the deed, she is in possession of

what the deed bargained for, namely, the share of the defendant, she can have no further claim upon him on account of the mortgage. I accordingly reverse the order of the lower court, and decree this appeal, with costs against the respondent.

THE 9TH MAY 1850.

No. 7 of 1849.

Appeal against the decision of Opinder Chunder Nyaruttun Roy Bahadur, Principal Sudder Ameen of Jessore, dated the 23rd March 1849.

Mr. Robert Savi, Appellant in the suit of Mr. C. DeBrandy,
(Plaintiff,) Respondent,

versus

The Appellant, J. Hills, junior, D. Rose, and Meares, (Defendants.)

THIS suit was instituted on the 2nd August 1847, to recover rupees 1,702-8, arrears of salary, with interest.

The plaintiff was appointed by Mr. Savi, when the latter was a part owner of the factories known as the Sindoorree concern, as an assistant on a salary of rupees 150 per mensem. From the 20th November 1843, the date of his appointment, to the 30th September 1846, when the Sindoorree concern was sold, the plaintiff held his situation, but he only received his pay up to November 1845. He accordingly brings this action for the arrears due to him against Messrs. Savi and Hills, the former proprietors, and Messrs. Rose and Meares, the present ones.

Mr. Meares makes answer that he cannot be held answerable for this claim, which ought to have been preferred against the parties who appointed the plaintiff, besides, if the present proprietors are to be considered liable, the plaintiff ought to be nonsuited for not suing the Union Bank, which now owns the Sindoorree concern. He concludes with accusing the plaintiff of a breach of trust while employed as a factory servant, and says he was aware that it was the intention of the factory to sue him, and that he therefore brought this suit as a set-off against future consequences.

Mr. Robert Savi answers that the present owners are answerable for the plaintiff's claim; but that the suit ought to be thrown out, as the plaintiff, having sued him as former proprietor, was bound to include all the other partners also. He pleads further that the plaintiff's salary was only rupees 100 a month, at which rate he not only received all he was entitled to, but something over.

The principal sudder ameen considered the claim established, and decreed it against Mr. Savi, on the ground that he was the party who appointed the plaintiff, and the debt, now sued for, was not entered as a liability of the factory, when he sold it.

JUDGMENT.

The judgment of the lower court is erroneous, and is opposed to the general practice of holding a factory answerable for claims of this sort. The present proprietors did not certainly contract the debt now sued for, but the concern cannot shake off its debts on every change of its proprietors. The Sindoorree concern must be held answerable for this claim, together with all the costs, and I decree accordingly, in modification of the order of the lower court. The appellant is also declared free from liability.

THE 11TH MAY 1850.

No. 14 of 1848.

Appeal against the decision of Mr. C. Mackay, Additional Principal Sudder Ameen of Jessore, dated the 6th June 1849.

Jusser Khan and others, (Plaintiffs,) Appellants,

versus

The Collector of Jessore and others, (Defendants,) Respondents.

THE real object of this suit was to obtain the reversal of the settlement by the revenue authorities of two plots of land, comprising 12 beegahs, said to have been improperly settled as part of the resumed lakhiraj tenure of Tunnoo Beebee, in mouzah Futtapoor.

The defendants pleaded that the civil court had no jurisdiction in a matter of this kind, and quoted as a precedent the case of Hurgovind, petitioner, and the orders of the Sudder Court thereon, dated the 17th July 1847.

The principal sudder ameen dismissed the suit, as he considered that the civil court could not interfere in a case of this nature.

JUDGMENT.

The lower court was quite right. The plaintiffs admit that the land claimed by them as being their lakhiraj property in Joipoor, was measured, assessed, and settled with Tunnoo Beebee, as part and portion of her resumed lakhiraj mehal in Futtapoor. To give the plaintiffs a decree and declare, as they wish, the land not those of Futtapoor but Joipoor, would be to interfere directly with the Government revenue. This has been declared as clearly beyond the competence of the civil courts. The plaintiffs have sought their remedy in the wrong quarter. Their proper course was to petition the revenue or resumption authorities. The appeal is dismissed, with costs.

THE 11TH MAY 1850.

No. 10 of 1849.

Appeal against the decision of Opinder Chunder Nyaruttun Roy, Bahadur, Principal Sudder Ameen of Jessore, dated the 13th April 1849.

Hazaree Sheikh, (Plaintiff,) Appellant,

versus

Goluck Chunder Biswas, Kalee Pershad, Gour Pershad, Sumboo Chunder, and others, (Defendants,) Respondents.

THE plaintiff sues to recover possession of a jote jumma in Kurkolea from which he was dispossessed by the then talookdar, Gour Pershad, Goluck Chunder, his ryut, and others, in 1246. The jumma was really mouroosee, having been held by the plaintiff's ancestors at a fixed rent from 1182, but Gour Pershad, having become the purchaser of Kurkolea, demanded a fresh settlement from the plaintiff: which he agreed to, giving, on the 27th Jyte 1245, a kubooleut, stipulating for an enhanced rent, though some portion was declared under abeyance. The next year, however, Gour Pershad demanded the *full* rent, to which the plaintiff not agreeing, he turned him out of his jote, putting in Goluck Chunder and Kalee Pershad.

Goluck Chunder replies that the plaintiff relinquished his jote in 1237, when Ramchunder Chuckerbuttee was talookdar of Kurkolea. He was away for 15 years, when, in 1252, he returned to the village, and was installed by the zemindar into a vacant jote, which he still possesses. His former jote remained on the talookdar's hands from 1237 to 1246, when it was leased in perpetuity to the defendant by the talookdar's naib. In 1248, Sumbhoo Chunder bought the talook, and with a view to oust the defendant, he brought a summary suit against him and Kalee Pershad Nag, (his own servant, whom he falsely alleged to be a partner in the jote,) and, getting an *ex parte* decree, had the jote sold, which he purchased himself in the name of Loknath. The defendant had the summary suit award reversed in a regular suit, which he carried successfully through the moonsiff's court of Commercolly, the judge's court, and the Sudder; and he was about to sue Sumboo Chunder for possession and wassilat, who, finding that a decree against him was inevitable and certain, has now adopted the expedient of this suit, through the plaintiff, to frustrate the defendant's claim, and to keep him out of possession of his jote. The defendant argues, that if the plaintiff had not utterly given up all claim to the jote in dispute, he would not have remained silent while the defendant and Sumboo Chunder were fighting about it, nor would he have allowed it to be sold without saying a word, or protecting his interest in some way or other.

Sumboo Chunder's reply is in support of the plaintiff's statement that he was dispossessed in 1246, by Gour Pershad, the former talookdar.

Kalee Pershad replies that he and the defendant, Goluck Chunder, were joint owners of the jote in dispute from which they were sold out by Sumboo Chunder.

The principal sudder ameen, considering that the dakhilas produced by the plaintiff from 1237 to 1246 were forgeries, and that the kubooleut said to have been executed by the plaintiff in 1245, was manifestly a device to make it appear that his dispossession took place within 12 years from the institution of his suit; and being further of opinion that the facts of the case bore out the defendant's (Goluck Chunder's) statement that the plaintiff quitted his jote in 1237, and that the present claim has been brought at the instigation and for the benefit of Sumboo Chunder, supported by forged and fictitious documents, dismissed the suit.

JUDGMENT.

Being of opinion, for the reasons detailed at length in the decree of the lower court, that the documents filed by the plaintiff have been purposely prepared to support his claim, and that there are strong indications of a collusion in this suit between the plaintiff and Sumboo Chunder, with the intention to injure the claim of Goluck Chunder to the jote in dispute, and considering it altogether unaccountable, unless, as Goluck Chunder has urged, the plaintiff had utterly relinquished all hope and title to the jote, that he would have quietly looked on while others were contending about it allowing it even to be sold; and there being no proof (the dakhilas being set aside) that the plaintiff has had possession within 12 years, but on the contrary he quitted his jote in 1237, I agree with the lower court in the propriety of dismissing his suit. The appeal is accordingly dismissed, with costs.

THE 27TH MAY 1850.

No. 8 of 1849.

Regular Appeal from the decision of Baboo Opinder Chunder Nyaruttun Roy Bahadoor, Principal Sudder Ameen of Jessore, dated the 30th March 1849.

Hurnath Roy, (Plaintiff,) Appellant,

versus

Mr. A. Battersby and three others, (Defendants,) Respondents.

THIS is a suit to assess the jote of the defendant at pergunnah rates.

The defendant does not deny the right of the plaintiff to make a fresh assessment, but objects to his rates as not being those of the pergunnah but much higher. He demands a settlement at the same rates as the civil court allowed the plaintiff, in a case brought by him to assess the jote of another ryut in the same turruff as that in which the defendants' lands are situated.

The principal sudder ameen appointed an officer to make a local enquiry who reported that the defendant occupied beegahs 615-12½ of land, the proper assessment of which at the pergunnah rates was rupees 870-5-6. As the rates adopted by him were in excess of what the court had already declared to be the rates of that part of the plaintiff's estate in which the lands in the present suit are comprised, the principal sudder ameen rejected the ameen's report as incorrect. He then deputed a second officer to ascertain the rates, whose report he also rejected, and finally drew up an assessment at the rates of the former decree, declaring the plaintiff entitled to demand an annual rent of rupees 472-1-6, from the date that he issued the notice to the defendants. A small quantity of beegahs 13, cottahs 5½ of land, was deducted from the area in the defendants' possession, as being claimed by and under the occupation of another party.

Both parties appeal. The plaintiff, because, first, his own assessment has not been allowed, and second, because of the deduction from the defendants' holding of the beegahs 13, cottahs 5½. The defendant is dissatisfied, because, first, the court has not allowed him any deduction from the gross rent on account of charges of collection, and second, because the new assessment has been decreed from the date of notice.

JUDGMENT.

With respect to the plaintiff's first ground of appeal, I think he has just cause for his dissatisfaction. The lower court deputed two different ameens to enquire into the rates current in the locality, both of whose investigations it set aside, because the rates they reported were higher than what the court had allowed in a former case of a similar nature. Now the lands in that suit were certainly in the same pergunnah as those now before us, and the rates were ascertained by an ameen deputed for the purpose, and on his report the assessment was adjusted. No appeal having been made against the assessment as then fixed by the court, that decree has become final; but it is not fair, I think, to take that award as the invariable basis of settlement of every other jote or talook situated in other parts of the same pergunnah. What with the case already disposed of, and the two local enquiries, which have been made in the present case, it is plain that the rates are not uniform in the pergunnah, and what was a fair assessment in one case may not therefore possibly be a fair one in another. The question then is, what is a proper assessment, and what means are there of certainly knowing that whatever may be the sum fixed upon that sum is a fair assessment? This, I think, has been ascertained beyond all doubt. When the case first came before me in appeal, I inquired of the plaintiff's vakeel, whether in late years there had not been made any settlements of resumed lands by the revenue authorities in that part of pergunnah Taragonea, where the defendants' land lies. To this his reply was

that certain settlements had been made, and he requested time to obtain copies of the Government assessment in those cases. This being allowed, he now files copies of three settlement roobakarees relating to lands in the immediate neighbourhood of those in the occupation of the defendant. Setting aside, therefore, the former decree and the three local enquiries, it appears to me that the fairest mode of fixing the assessment is to be guided by the impartial data afforded by the proceedings of the settlement officers. The following then is the assessment as drawn up according to the rates furnished by these authorities :

Description of land.	Quantity.	Rate.		Total.	Remarks.
		Rs.	A.		
Bast,	14 5	2 0		28 8 0	
Palan,	12 13	2 0		25 4 9½	
Dhance,	361 10½	1 0		361 8 4½	
Laik Puttet,...	183 7	0 12		137 8 2½	<p>This is the lowest rate for lands fit for rice cultivation according to the settlement roobakarees.</p> <p>This description of land is not mentioned in the settlement roobakarees, but it is well known that this is the proper rate for such lands.</p> <p>Indigo being generally sown on ordinary land, the rate as for dhance has been adopted.</p>
Bagat,	1 10	2 8		3 12 0	
Indigo,	19 11	1 0		19 8 9½	
Total land,	592 16½	Tl. rs. 576 2 2			

The above I accordingly decree as the rent, which the plaintiff is justly entitled to demand from the defendant from the date of notice.

As to the second point complained of, viz., the deduction of the beegahs 13, cottahs 5½, the court could do no otherwise than exclude it from the present suit, it being disputed land. Neither is the plaintiff injured in the least by such an order; for in whosoever possession the excluded land may be, the existence of the land is not destroyed, nor is the right of the plaintiff to re-assess it in any way injured.

In regard to the defendant's first objection, his is not such a tenure as, in my opinion, to entitle him by Section 8, Regulation V. 1812, to any deduction from his rent on account of charges of collection.

The second objection is altogether futile, as enhanced rent is demandable by Sections 9 and 10, Regulation V. 1812, from the date of notice, and I cannot see on what grounds of reason the zemindar's right to it from that date at the rate fixed by the court

can be considered forfeited, because his own assessment was somewhat in excess of what the court considers a just sum.

The decree of the lower court therefore stands in all but the amount of rent in which respect it is amended. The respondent will pay the costs of this appeal in the proportion of the amount of rent decreed.

THE 27TH MAY 1850.

No. 9 of 1849.

Regular Appeal from the decision of Baboo Opinder Chunder Nyaruttun Roy Bahadoor, Principal Sudder Ameen of Jessore, dated the 30th March 1849.

Mr. A. Battersby, (Defendant,) Appellant,

versus

Hurnath Roy, (Plaintiff,) Respondent.

THIS is the second appeal from the decision of which the particulars have been fully related in the foregoing No. 8 of 1850. A copy of the judgment in that suit will be filed with the record of this appeal, which, on the grounds therein detailed, is dismissed, with costs.

THE 31ST MAY 1850.

Case No. 17 of 1849.

Appeal against the decision of Mr. Mackey, Additional Principal Sudder Ameen of Jessore, dated the 29th June 1849.

Gooroo Das Roy and others, (Defendants,) Appellants,

versus

Mr. H. French and others, (Plaintiffs,) Respondents.

THIS suit is brought by the plaintiffs, who held the putnee of lot Boorookandee, pergunnah Nuldee, against Gooroo Das Roy and others, who occupy certain lands in the said lot, which the plaintiffs claim a right to assess at the current pergunnah rates. The particulars of their plaint are, that the former zemindar of pergunnah Nuldee before sued the present defendants, to fix their jummas at the then pergunnah rates, when, owing to the death of the zemindar and his successor being a minor, the defendants managed, through the collusion of the court ameen, to obtain an order whereby they were declared to be in possession of only 11 kad. 14 p. of land, which, according to the rates said by the same corrupt ameen to prevail in the pergunnah, were assessed at rupees 1-5 per pakee. The present plaintiffs, after they obtained the putnee of lot Boorookandee, soon discovered that the defendants were in possession of a great deal of land in excess of the above 11 k. 14 p., and

they accordingly brought a suit to assess the excess, which suit, when it had proceeded almost to completion, the pleadings having been completed, exhibits filed, and a local enquiry effected, was thrown out by an order of nonsuit on account of some flaw. The plaintiffs having now rectified the error, which caused that suit to miscarry, appear again in court and claim, on the result of the enquiry of the local ameen in the nonsuited case, to assess the lands occupied by the defendants in excess of the quantity formerly decreed as in their possession, at the present pergunnah Nuldee rates of 2 rupees per pakee on 30 k., 7 p., 16 k. of land.

The defendants answer that it ought to have been stated what lands the defendants held in each village in excess of what the decree alluded to by them specified. The fact is that defendants have no other lands but what they held when that decree was passed, so that the claim of the plaintiffs is both futile and vexatious. That as to the rate of 2 rupees per pakee, at which the plaintiffs sue to assess the asserted surplus lands of the defendants, such a claim can never be maintained in the face of a decree of court, fixing the rates of the defendants' lands in the same villages at rupees 1-5 per pakee. Moreover, the village of Bazeedanga, in which the plaintiffs say that the defendants hold certain lands, is not in the putnee mehal of the plaintiffs, but belongs to the defendants' own talook. That this village of Bazeedanga was not mentioned in the former suit of the zemindar of Nuldee, nor in the rejected suit of the present plaintiffs; facts, which are sufficient to show the vain nature of the plaintiffs' pretensions.

The principal sudder ameen, having, at the desire of the parties to the suit, sent for the record of the former suit between them in which were filed the local ameen's measurement papers and report, decreed to the plaintiffs a right of assessment over 21 k., 3 p., 5 k., 1 r., 19½ g., at the Nuldee pergunnah rate of 2 rupees per pakee, making an annual jumma of rupees 678-6.

Both parties appeal against this decision.

The defendants' grounds of appeal are—

First. That they were not present during the measurement of certain portions of the land recorded in the ameen's papers as in their occupation, and so had no opportunity of making the objections which they otherwise might have done.

Secondly. That only a small portion of the disputed land, of which the defendants alleged they were not in possession, was excluded from assessment by the lower court.

Thirdly. That the court ought to have excluded from assessment certain lands which the defendants claimed as their own talook lands of Issapassa.

Fourthly. That the rate of 2 rupees per pakee is in excess of the rate declared by the civil court to be the proper rate of assessment of defendants' lands.

The plaintiffs appeal on one ground only, viz., against that part of the lower court's order which excludes from assessment the lands claimed as belonging to their village of Bazeedanga.

In regard to the defendants' first ground of appeal, I find they urged the same before the lower court, where it was rejected, and very properly so. It was the defendants' duty to look after their own interest, and to take care to be present at all times when the measurement was going on. But the fact is they were present the greatest part of the time, when they taxed their ingenuity to the utmost to raise all manner of objections and claims, and it appears to me, that in the few instances where they were not present, was when they had no objections to offer, and designedly kept out of the way in order to afford them a plea hereafter to dispute the integrity of the measurement.

Of the second ground of appeal, I observe that what was proved to belong to others, was, by the lower court, excluded from assessment. The defendants in several instances asserted that certain lands belonged to other estates, but, unfortunately for them, the proprietors of those estates were not disposed to embroil themselves in a lawsuit to meet the convenience or designs of the defendants. Land of this description was of course not allowed to be exempted from assessment on such vain pleas.

With respect to the third ground of appeal, I am of opinion that the lower court rightly allowed the assessment on the land claimed by the defendants as those belonging to their talook of Issapassa. The defendants ought to have given clear proof of this, but they offered none at all, whereas the evidence taken before the local ameen showed that the land in question was within the putnee tenure of the plaintiffs. Still with a view to protect the defendants from any possible loss of lands, to which, on a more particular enquiry, they may be able to show a clear title, I think it right to declare that this decree is to be considered no bar to the claim of the defendants to the lands said by them to belong to Issapassa, should they hereafter bring a regular action for this purpose.

It remains to consider the fourth and last ground of appeal, viz., as to the rates. The decree alluded to, by which the assessment on the defendants' lands was fixed at rupees 1-5 per pakee, was passed in 1820. Whether those rates were the *bonâ fide* rates of the pergunnah at that time, or whether they were understated, as alleged, through the collusion of the court ameen, is of no importance to the decision of this suit. The putneedars' claim is to assess lands in excess of what the defendants held when the said decree was passed; and whatever the pergunnah rates now are, those rates they have a clear right to enforce. It is well understood that the pergunnah rate all over Nuldee is 2 rupees per pakee, which the courts have frequently decreed in suits disposed of, long since the decision on which the defendants rely in favor of the lower rate of rupees 1-5 per pakee.

I accordingly agree with the lower court in considering that the rate of 2 rupees per pakee is the just and proper rate at which the plaintiffs are entitled to demand the rent of the lands involved in this suit.

With respect to the defendants' cause of dissatisfaction, it is enough to say that I agree with the lower court in considering that the lands in Bazeedanga cannot with propriety be admitted in this suit. The question of the proprietary right in these lands, now raised, can only be decided in a regular suit.

On all the above grounds I uphold the order of the lower court, with the modification as regards the liberty given to the defendants to sue regularly for any claim they may possess to the lands said by them to belong to Issapassa.

The defendants will pay the costs of this appeal.

THE 31ST MAY 1850.

No. 18 of 1849.

Appeal against the decision of Mr. Mackey, Additional Principal Sudder Ameen of Jessore, dated the 29th June 1849.

Mr. H. French and others, (Plaintiffs,) Appellants,

versus

Gooroo Das Roy and others, (Defendants,) Respondents.

THIS is a second appeal from the decision of which the particulars have been given in No. 17. The ground of the plaintiffs' appeal was considered in that case, and it will be sufficient therefore if a copy of the judgment in appeal be appended with the record of this appeal.

Ordered accordingly, that this appeal be dismissed, with costs.

ZILLAH MIDNAPORE.

PRESENT: W. LUKE, ESQ., JUDGE.

THE 13TH MAY 1850.

No. 230 of 1849.

*Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq.,
dated 23rd August 1849.*

Nobin Puramanik, (Defendant,) Appellant,
versus

Gour Hurree Pundah, (Plaintiff,) Respondent.

THIS is an action for a bond debt, laid at Company's rupees 781-5-8.

The defendant denies the claim, and pleads that this is a counter-suit to prejudice a claim that he (defendant) has against plaintiff. The principal sudder ameen thus records his judgment:

"The bond, which forms the present grounds of action, is satisfactorily proved by four subscribing witnesses to have been only executed by obligors to obligee, and it further satisfactorily appears that they received a valuable consideration for it, *i. e.*, rupees 451. Defendants have filed a petition, alleging that only one stamp, No. 3, was sold to the endorsee of plaintiff's bond paper, and that he executed an agreement on it, and gave it to another party, and in support of their allegations have adduced duly certified copies of the stamp vendor's monthly statement and agreement aforesaid; but there is nothing on the said exhibits to show that the one stamp, No. 3, sold on the date in question, is not the *one* now produced by plaintiff. In order to set that matter finally at rest, however, we summoned the stamp vendor, who has to-day distinctly and unhesitatingly deposed that plaintiff's stamp was sold by his nephew on the date endorsed thereon. Thus the defendant's allegations anent it are manifestly untrue, and consequently their other pleas are deserving of no attention, but, *en passant*, we will say they have failed to show bad faith or illwill on plaintiff's part. The khatta-buhees adduced by them alone are not evidence of a claim against plaintiff. Therefore, for the foregoing reasons, we give plaintiff an award for Company's rupees 781-5-8, and costs, &c."

I cannot concur in this finding. The validity of the bond rests entirely on the testimony of five subscribing witnesses, and it is therefore necessary to ascertain and weigh well the degree of credit that can be attached to it. The writer of the bond, Sadoo Churn, deposes that he both drafted and signed it, and that the other four witnesses likewise attested it *at the same time*. From a careful inspection of the bond, however, it is evident that the names of four witnesses are not written with the same ink as the bond itself, and as the name of the engrosser, Sadoo Churn; it is likewise quite clear that the ink with which two of the said witnesses' names are written is much darker, and very different from that of the other two, which warrants the inference that the names of the five witnesses were not affixed to the bond at one and the same time as stated by Sadoo Churn. Again, the witnesses depose so consistently to circumstances as having occurred seven years ago as to the hour, day, month, &c., on which the loan was granted, and other minute facts as to the counting and testing the rupees, as to render it impossible to avoid the conclusion that they have been tutored. It is likewise beyond probability that their recollection should be so retentive as to enable them to relate occurrences of seven years ago, with all the minuteness and freshness of yesterday. These witnesses, it also appears, are not the neighbours of either the plaintiff or defendant; but are residents of distant villages, and it is unlikely, if the transaction on which this suit is founded, had occurred *bonâ fide*, that the bond would have been executed in the house of a third party in a village some distance from both plaintiff's and defendant's homes, and attested by witnesses brought, or who had accidentally come, to the spot where they were required. According to the tenor of the deed, the loan was granted to carry on some mercantile transaction, and was to be repaid in six months. It is to be inferred therefore that plaintiff is a mahajun, and in the habit of granting loans, and ought, consequently, to have accounts in the shape of rokurs and khattas, in which a record of the present transaction would appear; but no accounts or vouchers have been offered in support of the claim, nor does plaintiff attempt in any way to account for having neglected to take steps to recover for seven years, or to show that he has even demanded payment in the meantime of money, which, according to agreement, was to have been liquidated in six months. I cannot but view the bond with the strongest suspicion, and, for the reasons I have above stated, believe that the suit is brought solely to serve malicious ends.

The appeal is accordingly decreed, with costs, the respondent's vakeels being present, and the decision of the lower court set aside.

THE 13TH MAY 1850.

No. 240 of 1849.

*Appeal from a decision of the Moonsiff of Nikassee, Syud Waris Alee,
dated 31st August 1849.*

Mudhoo Kurun, (Defendant,) Appellant,
versus

Jugguth Chunder Sen, (Plaintiff,) Respondent.

THIS is a suit for rent of 3 b. 17 c. 3 c. of land, on account of the years 1252 and 1253 Umlee. The defendant denies and pleads that he holds his lands from Govind Holdar and others (opposing parties in the lower court,) and has paid his rents to them, in proof of which he files a decree passed in the moonsiff's court, declaring them liable to the opposing parties for the rents of 1251 and 1252 Umlee.

This suit originally came before my predecessor in appeal, and was remanded with directions to the moonsiff, that "he should proceed himself to the spot and ascertain the fact as to whether or not the plaintiff is in possession of the land mentioned in his kuballa."

The moonsiff, having carried out these instructions, observes that on visiting the spot in dispute he finds that there is a rent-free holding, comprising an area of 113 beegahs of land in one plot, that the plaintiff is in possession of 56 beegahs of this quantity, and that his possession is proved by the evidence of the cultivators, who produced their *dakhillas* for past years in proof of their having paid their rents to the plaintiff. The moonsiff further remarks that the measurement chitta of the amcen deputed to measure these lands when resumed under Regulation II. 1819, prove that the defendant's jote lies within the 56 beegahs aforesaid, and as defendant is unable to establish his plea of having paid any rent for the same either to plaintiff or the opposing party, the moonsiff decrees for plaintiff.

There appears no cause to interfere with this judgment. Plaintiff's claim on defendant, in virtue of his deed of sale and possession, is indubitable.

The appeal is accordingly rejected, without serving a notice on respondent.

THE 13TH MAY 1850.

No. 242 of 1849.

*Appeal from a decision of the Moonsiff of Nikassee, Syud Warris Ulee,
dated 31st August 1849.*

Mudhoo Mundul, (Defendant,) Appellant,

versus

Jugguth Chunder Sen, (Plaintiff,) Respondent.

THIS is a suit for rent on account of the years 1252 and 1253 Umlee.

The particulars of this case are identical with those recorded in case No. 240. For the reasons therein assigned the appeal is rejected, and the decision of the lower court affirmed, without serving a notice on respondent.

THE 13TH MAY 1850.

No. 243 of 1849.

*Appeal from a decision of the Moonsiff of Anundpore, Omeschunder
Mookerjee, dated 4th September 1849.*

Ram Kishto Ghosal, (Defendant,) Appellant,

versus

Komlakanth Pathur, (Plaintiff,) Respondent.

THE plaintiff sues for a book debt of 14 rupees, 2 pie. He states that he keeps a modee's shop, and both defendant and his father have dealt with him for years past; that he tendered defendant a copy of his account, amounting to 18 rupees, 8 annas, 8 gundahs, from which a deduction of rupees 4-8 was allowed on account of sundry payments, leaving a balance of Company's rupees 14, 2 pie; that he (defendant,) in acknowledgment of its correctness affixed his signature to the bill, but still refuses to pay. The defendant denies the account, and that he ever had any dealings with plaintiff. •

The moonsiff observes that five witnesses depose to defendant's being in the habit of getting his supplies from plaintiff's shop, and to his (the defendant's) signing the account; that defendant does not deny that he signed the bill, and that he fails to produce evidence in support of his pleas though allowed three months to do so. The moonsiff also deems it improbable that defendant should deal with a shop-keeper, who resides at another village, when he can supply his wants at the shop of plaintiff, which is contiguous to his (defendant's) own house, and gives a verdict for the plaintiff.

The moonsiff is in error in saying the defendant does not deny that he signed the account. In his reply he distinctly states that the account and the allegation of his having signed it are "touchhook," false. If the claim be a just one, the plaintiff's books, in which his daily sales are recorded, will prove it and the truth or otherwise of the account filed in evidence. The moonsiff will adopt this course, and call upon the plaintiff to produce his books from which the account has been prepared.

The appeal is admitted, and the case remanded that the moonsiff may proceed as directed.

THE 14TH MAY 1850.

No. 244 of 1849.

Appeal from a decision of the Moonsiff of Pertabpore, Golam Sobhan, dated 8th September 1849.

Juggobundo Roy, (Plaintiff,) Appellant,

versus

Kinkur Chuckerbutty and others, (Defendants,) Respondents.

THE plaintiff sues for a bond debt, laid at Company's rupees 29-9.

The defendants, Kinkur Chuckerbutty and Ramossur Chuckerbutty deny, and plead that plaintiff is at enmity with their ijaradar, to gratify which he has brought the present suit. The other two defendants allow judgment to go by default.

The moonsiff attaches no credit to the bond. He remarks that the names of the two certifying witnesses have, beyond a doubt, been adduced to the bond long subsequent to the date on which the deed itself was engrossed, as the ink is comparatively fresh and of a different color to that in which the bond is drafted. He deems it a suspicious circumstance that the writer of the bond was never cited to appear by plaintiff, and that his name was altogether omitted in the list of witnesses filed. He rejects the evidence of the witnesses for the reasons above stated, and because it is contradictory and improbable, and dismisses the suit.

I see no grounds to disturb this award. In addition to the cogent reasons the moonsiff gives for discrediting the bond, there are other circumstances, which render its truth improbable. The stamp on which the deed is drafted, is endorsed to a third party, residing in another village, and totally unconnected with the parties in this suit, but at a date only five days previous to that which the bond bears. Had there been a *bonâ fide* transaction between plaintiff and defendant, it is obvious that defendants would have provided the stamp as is usual in such cases, and purchased it in their own name, there is no reason why they should substitute that of a stranger. The usual course having been departed from, and seven years having elapsed

without measures having been taken to recover, though the bond was according to agreement to have been redeemed six months after date, warrants the inference that the bond is one of yesterday, and that the stamp paper suited to this purpose has been procured by plaintiff from those who make a livelihood by selling paper of long date for purposes such as the present appears to be. The appeal is rejected without serving a notice on respondents.

THE 14TH MAY 1850.

No. 248 of 1849.

*Appeal from a decision of the Moonsiff of Nikassce, Syud Warris Alee,
dated 25th August 1849.*

Bikram Majee, (Plaintiff,) Appellant,

versus

Kalee Pershad Ghose and others, (Defendants,) Respondents.

THIS is an action for damages for injury sustained by defendants' withholding a receipt for rent paid by plaintiff to defendants, laid at 16 rupees.

The defendants deny the cause of action, and the defendant, to whom, it is stated by plaintiff, the money was paid, pleads that, on the date specified, viz., the 29th Maugh 1252 B. S., he was at Chuckerpore, in the Hooghly district, which he can prove by his exhibits.

The moonsiff gives a verdict for the defendant. He is of opinion that the present suit has been brought forward at the instigation of a body of dissatisfied ryots, who are at issue with the defendants, their landlord, and his servants, and has no foundation whatever in truth.

He regards the testimony of the witnesses, who swear to the plaintiff's having paid defendants Company's rupees 16 as altogether unworthy of credit, as it is both contradictory and improbable. He also considers the evidence of the witnesses further refuted by defendants' exhibits, which clearly establishes defendants' absence at the time money is stated to have been paid to them.

The plaintiff, in appeal, demurs to the moonsiff's arguments for rejecting the evidence, but I see no grounds for interfering with his decision. This suit is of the nature referred to in Regulation II. 1805. In claiming compensation for loss of receipt, the title to such a document must be proved. The plaintiff has not attempted to prove that he is a tenant of defendants, the quantity or description of land he holds, where situated, or the nature of his connection with the defendants that rendered it necessary for him to pay rent to them; and as no grounds for payment are shown, the reasonable inference is that none was made.

Again, in a suit like the present, the *animus*, that influenced defendants in withholding the receipt must be shown to have been dishonest. The plaintiff has not proved the intention to have been fraudulent or dishonest, and he is not therefore entitled according to the spirit of the law to damages.

The appeal is accordingly dismissed without serving a notice on respondents.

THE 23RD MAY 1850.

No. 249 of 1849.

*Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq ,
dated 20th August 1849.*

Soondernarain Bhooya, (Defendant,) Appellant,

versus

Gunganarain Mytee, (Plaintiff,) Respondent.

THIS is an action for possession in right of foreclosure, laid at Company's rupees 677-15-8-11½, the deed of conditional sale, bearing date 14th Poos 1253.

The defendant allows judgment to go by default.

The principal sudder ameen observes—"The deed of mortgage and conditional sale are satisfactorily proved by four of the subscribing witnesses to have been executed by the defendants, and it further appears that he received the within written valuable consideration, and failed to repay his loan within the year of grace allowed by law. Plaintiff is entitled to the foreclosure now sought, and we award him possession of the one mouzah 3 annas 10 cowrees aforesaid, and mesne profits, &c."

In appeal, the defendant pleads that he was prevented defending the suit by illness; this plea is, however, at variance with that made by defendant in the lower court, where he stated that his attendance at the magistrate's court was the cause of his default. The proceedings of the lower court appear to have been regular, and consistent with the rules of practice. On the other hand the reasons of default are frivolous and vexatious, and I therefore see no reason to disturb the principal sudder ameen's decision, which is accordingly affirmed, and the appeal rejected without serving a notice on the respondent.

THE 23RD MAY 1850.

No. 250 of 1849.

*Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq.,
dated 28th August 1849.*

Soondernarain Bhooya, (Defendant,) Appellant,

versus

Gunganarain Mytee, (Plaintiff,) Respondent.

THIS is an action for possession in right of a foreclosure, laid at Company's rupees 677-15-8-11½.

The circumstances connected with this case are exactly similar to those in appeal No. 249, and for like reasons the appeal is rejected, without serving a notice on the respondents, and the principal sudder ameen's decision affirmed.

THE 23RD MAY 1850.

No. 252 of 1849.

*Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq.,
dated 3rd November 1849.*

Khatoon-oonnissa Boebbee, (Plaintiff,) Appellant,

versus

Prem Narain Singh and others, (Defendants,) Respondents.

THIS is an action for possession, and to reverse a judgment made under Act IV. 1840, laid at Company's rupees 474.

The plaint sets forth that plaintiff purchased from one Sumbhoo-ram Muhto, mouzah Sirsee in 1252, that defendants usurped possession of 36 beegahs of the land pertaining to that village, which plaintiff now sues to recover.

The defendants, in reply, plead possession in right of purchase.

The principal sudder ameen thus records his judgment—"We think we have no jurisdiction in this matter, for we find both by the plaint and a judgment of the court below that a suit was brought by plaintiff *versus* defendants for the same cause of action, viz., possession of these same 36 beegahs and reversal of the Act IV. case, which was dismissed on its merits. After the decision, plaintiff takes a second kuballa from the vendor, and upon the strength thereof has brought this action. The second kuballa, or bill of sale, may have remedied the flaw in the first, but does not change the cause of action, nor give jurisdiction; if the contrary be admitted, there would be no end to actions nor to conflicting decisions. Therefore, considering plaintiff's claim barred under Section 16, Regulation III. 1793, we dismiss it, with costs."

In appeal, the plaintiff argues that this suit was originally dismissed, because his title deed was defective in reference to the said 36 beegahs. That defect having been now remedied, he pleads his right to sue on the new bill of sale, and quotes a precedent from volume II., Select Reports, page 49, Buldeo Sircar *versus* Rajnarain Roy, dated 4th March 1813. The precedent is inapplicable, the ground of action, which is identical in both suits brought by plaintiff, is in no way altered by the second deed of sale he obtained from the vendor of mouzah Sirsee. The point of possession having once been adjudicated, and finally set at rest by the moonsiff, from whose decision no appeal was preferred, it cannot for the reasons stated by the principal sudder ameen be revived.

I therefore see no reason to interfere with his decision, which is affirmed, and the appeal rejected without serving a notice on the respondents.

ZILLAH MOORSHEDABAD.

PRESENT: D. I. MONEY, Esq., JUDGE.

THE 21ST MAY 1850.

No. 85 of 1838.

Original Suit.

Bidda Dhur Roy, Plaintiff,

versus

Hosain Allee Khan, heir of Kulsoomnissa Begum, Gooroochurn Dutt, Mirza Koorban Allee, Ramjoy Sundyal, and Anund Gopal Roy, Defendants.

Oomda Begum and Ramesher Bagchee, Claimants.

SUIT for the possession of the moiety of mouzah Kapasdanga conditionally sold to the plaintiff, laid at rupees 7200, instituted 21st August 1837.

The plaintiff sets forth that, on the 4th Assar 1231 B. S., the defendant Kulsoomnissa Begum assigned to the plaintiff, by a deed of conditional sale, 8 annas share of Kapasdanga, Manick Nuggur, &c. rent-free mehals, together with others adjoining thereto, for Sicca rupees 2000, which the plaintiff paid to her under an ikrar, or agreement, stipulating that, should the amount be repaid by the defendant within 5 years, the property in question would be restored to her, but if she failed to pay the sale would become absolute; that the defendant failed to perform her part of the agreement, and the sale was made absolute; that the plaintiff therefore sued against the defendants for possession of the aforesaid share of the defendants' zemindaree with mesne profits.

The defendant Khadim Hosain *alias* Hosain Allee Khan, after the death of Kulsoomnissa, his wife, filed an answer, and pleaded that the alleged assignment was not a genuine one, for, had it been, the plaintiff would have filed with it a kubzulsool, or receipt, as is generally required.

The defendants Anund Gopal and Gooroochurn, in their answers, stated that at a sale made by the collector of Moorshedabad they had purchased the mortgaged property.

Oomdah Begum, claimant, in her petition, stated that Hosain Allee, being divorced by Kulsoomnissa, had no right at all to the property

in dispute, and that she was the rightful heir of Kulsoomnissa, as she was her own sister.

Rameshur Bagchee, claimant, stated, in his petition, that he had purchased a 2 anna share of the litigated property at a public auction, held on the 17th August 1838, by the collector, for Company's rupees 145, had obtained a certificate of sale, and held possession.

The principal sudder ameen, on the 30th November 1840, dismissed the case, on the grounds that, on the 17th December 1835, a notice under Section 8, Regulation XVII. 1806, on the part of the plaintiff, was issued; that on the 28th July 1840, the right and interest of Kulsoomnissa Begum in Kapasdanga, in pursuance of an order of the provincial court dated 5th April 1836, was sold by the collector; that notwithstanding the plaintiff filed a copy of the decree of the Sudder Dewanny Adawlut, dated 12th July 1836, to show that in appeal the decree, in virtue of which the sale of the right and interest of the property of Kulsoomnissa Begum defendant took place, was modified, and she herself exempted from the liability of the decree obtained by Nowasee Begum against her, still the said sale, which took place 5 months prior to the foreclosure of the conditional sale, which was not stayed by the plaintiff, cannot be upset nor possession decreed; that the plaintiff may sue against her heirs for the recovery of the amount he advanced to the defendant.

The plaintiff appealed from this decision to the Sudder Court, which, on a full consideration of the merits of the case, decided that, if Kulsoomnissa Begum, the defendant, failed to pay the amount alluded to above, to the plaintiff, within the period stipulated, the sale became absolute, and if the said deed of the plaintiff were proved to be genuine then his right would unquestionably stand; but that a proper enquiry had not been held into the correctness of the deed, and that the principal sudder ameen misjudged in considering a failure on the part of the plaintiff to stay sale made by the collector affected his right. They considered the decision of the principal sudder ameen incomplete, and remanded the case for re-trial, with directions that it should be retained on the file of this court, and, after ascertaining what portion of the property in dispute was sold by the collector, and taking evidence from both parties, be decided according to equity and justice.

The case was received on the file on the 23rd July 1844, and agreeably to the superior court's directions the parties were called on to produce their proofs, and the collector of the district was requested to ascertain and inform the court what portion of the property in question had been sold by him.

That officer replied that it could not be ascertained what portion of the property had been disposed of at sale, since only the right and interest of Kulsoomnissa in the property had been sold.

It appears from the certificate of sale filed in the nuthee that the rights and interests only of Kulsoomnissa Begum in the rent-free

lands of mouzah Kapasdanga, &c., were sold in the collectorate in execution of a decree obtained against her. There is no clue to the exact portion that was sold. The purchasers at the sale bought her rights and interests with whatever liabilities were attached to them. The previous title of the plaintiff under the mortgage or conditional deed of sale to an 8 anna share of the property was not affected by their purchase. His omission to object to the sale at the time did not deprive him of this title, if it was legally conveyed to him by the deed of sale. I see no grounds for suspecting the genuineness of this deed. Two witnesses to the deed prove its execution, besides the writer of it, and it was duly and formally registered. I therefore decree to the plaintiff the possession of the moiety of mouzah Kapasdanga, &c., according to his claim, with mesne profits from the date of the institution of the suit. The costs to be paid by the defendants.

THE 21ST MAY 1850.

No. 4 of 1850.

*Regular Appeal from the decision of Baboo Sheeb Chunder Mookerjee,
Sudder Ameen of Moorshedabad.*

Nowab Nazir Derab Allee Khan Bahadoor, (Defendant,)
Appellant,

versus

Jubbanee Jemadar, (Plaintiff,) Respondent.

SUIT for the recovery of Company's rupees 30, being his share of the usufruct of mangoe and jack fruits for 1253 B. S., and Company's rupees 4, price of guavas, &c. total Company's rupees 34, instituted 20th June 1848, and decided 24th December 1849.

The plaint, original and supplementary, set forth that the plaintiff, in partnership with others, took a lease of a garden from the defendant for 9 years from 14th Srabun 1245 B. S. to the end of 1253 B. S., at an annual fixed jumma of rupees 42, engagements were executed between the parties, and the rent paid regularly to the defendant; that the defendant notwithstanding, in the month of Maugh 1253 B. S., or before the expiry of the said lease, dispossessed the plaintiff and his partners, and sold fruits for the years to the value of 90 rupees and faggots 12 rupees. He therefore (as his partners did not join him in the suit) brought this action against the Nowab Nazir and his partners Oozeer and Boodhoo Mundul, for the recovery of one-third of his share of the amount alluded to.

The defendants Nowab Nazir Derab Allee Khan and Prankisto Ghose, in their answers, pleaded that for 8 years the garden had been leased out to the plaintiff and his partners; that the said period having elapsed the lease was null and void, that in 1254 B. S. the defendants leased out the garden anew to other persons.

The sudder ameen gave a decree for the plaintiff against Derab Allee Khan to the amount of Company's rupees 26-10-8, deducting the remainder in consequence of the plaintiff's mistake in the estimation of his demand, exonerating at the same time the other defendants from liability.

The defendant Nowab Nazir Derab Allee Khan appeals from this decision, urging chiefly, in his plaint of appeal, that the dispossession of the plaintiff by the defendant in the month of Maugh 1253 B. S., had not been proved by the plaintiff, that mangoes and other fruit trees, which bore fruit in the month of Maugh 1253 B. S., could not have their fruit ripe till the month of Joist 1254 B. S., and that the term of the lease expired in the month of Chyte 1253 B. S., and that the plaintiff could not expect to enjoy possession when a fresh lease had been granted to others.

The sudder ameen has in this case given a decree in favor of the plaintiff upon a document by which alone his claim is supported, but which was never filed. The pottah or deed of lease was shown to the sudder ameen by the plaintiff, and returned to the plaintiff by the sudder ameen, because it was executed upon a stamp of inadequate value. The admission on the part of the defendant of having granted the lease to the plaintiff, as stated by the sudder ameen, made no difference. That document alone could determine the dispute regarding the period of the lease. It was irregular in every way. The sudder ameen could have either dismissed the claim founded on a deed inadequately stamped, or, under the Circular Order of the 7th January 1842, have nonsuited the plaintiff, or, regarding it as a special case, have granted the plaintiff a reasonable time to apply to the revenue authorities for the purpose of having the document stamped. The course he pursued was opposed to Section 6, Regulation IV. 1793. The appeal is admitted, and the case remanded to the sudder ameen for re-trial. The stamp value of the petition in appeal will be returned to the appellant.

•THE 21ST MAY 1850.

No. 63 of 1850.

Regular Appeal from the decision of Moulvee Momtaz Alli, Moonsiff of Gowas.

Khidmut Mundul, (Plaintiff,) Appellant,

versus

Sonatun Mistree, Roop Lall Mistree, and Ram Chunder Mistree,
(Defendants,) Respondents.

CLAIM, for the recovery of a bond debt, principal Company's rupees 18, interest Company's rupees 13-9-7, total Company's rupees 31-9-7, instituted on the 31st October 1849, and decided on the 28th March 1850.

From the plaint it appears that the defendants borrowed Company's rupees 25 from the plaintiff, and executed a bond on the 27th Joist 1251 B. S., promising to pay the amount in the month of Bhadore, but failed to fulfil their promise.

The defendants, in their answers, admitted the execution of a bond, but pleaded payment on different dates, and the return of the bond to them with an endorsement on the back of the payments made, stating that the bond on which the plaintiff based his claim was a forged one.

The moonsiff, distrusting the plaintiff's evidence, and crediting that of the defendants, dismissed the plaint, with costs.

The plaintiff appeals from this decision, on the ground chiefly that the stamp paper, on which the bond was executed, and upon which he sued, was purchased by one of the defendants, that the defendants' bond, which the defendants state was returned to them, and on which the moonsiff relied, was a fictitious one, that the moonsiff, although he was satisfied that Roop Lall, one of the defendants, could not write, believed his signature on the bond shown to him by the defendants, and that although he (the plaintiff) filed other bonds containing the signature of the defendant Sonatun, to prove his attestation on the bond upon which he based his claim, the moonsiff rejected the evidence.

The investigation of the moonsiff appears to me to be defective. The evidence put in by the plaintiff is not, in my opinion, shaken by the contrary evidence put in by the defendants. There is nothing suspicious in the bond entered by the plaintiff, which the moonsiff rejects, and much that is suspicious in the bond entered by the defendants, which the moonsiff admits as establishing their pleas. If the moonsiff doubted the genuineness of the bond, on which the plaintiff based his claim, he should have summoned all the witnesses to its execution. The appeal is therefore admitted, and the case will be remanded for re-trial. The stamp value of the petition in appeal to be returned to the appellant.

THE 22ND MAY 1850.

No. 8 of 1849. *

*Regular Appeal from the decision of Baboo Sheebchunder Mookerjee,
Sudder Ameen of Moorshedabad.*

Ram Rutten Roy, (Plaintiff,) Appellant,

versus

Dyamoye Chowdraine and Hurrosoondree Chowdraine, (Defendants,) Respondents.

SUIT for the recovery of Company's rupees principal with interest 493-9, under an instalment bond, executed 16th Maugh 1254 B. S., instituted 20th July 1848, and decided 27th February 1849.

The plaint states that the defendants borrowed from the plaintiff Company's rupees 301, in the month of Poos 1250 B. S., and again 56 rupees in Poos 1254 B. S., and on an adjustment of accounts with Lalmohun, a servant and agent of the defendants, there was a debt of 504-4, due to the plaintiff; that the defendants paid 25 rupees, and executed the instalment bond alluded to for Company's rupees 475-8, stipulating that if they failed to pay according to the terms of the bond they would be liable to interest for the same. The bond was then attested and registered. The defendants failed to fulfil the terms of the bond, and this action in consequence was brought against them.

The defendants, in their answers, denied the plaintiff's claim, and pleaded that if a comparison was made between their signatures and the signatures on the deed, it would show that the deed was fictitious, that had it been genuine, it would have been attested by witnesses residing near the plaintiff, and not at a distance; that the defendants were going to sue the plaintiff for arrears of rent when the plaintiff, to avoid the suit, brought this false action against them.

The plaintiff replied that he held no jumma of the defendants, and that consequently their assertion that they were going to sue him for arrears of rent was inadmissible.

The sudder ameen distrusted the evidence on the part of the plaintiff, as the witnesses to the execution of the deed did not reside in his neighbourhood, and it was proved by Lalmohun's brother brought by the plaintiff as a witness that Lalmohun was not a servant of the defendants, and the signature of the defendants on comparison differed with their signatures on the deed, and dismissed the plaint, with costs.

The plaintiff appeals from this decision, chiefly on the ground that in conformity to the provisions of Regulation III. 1793, the genuineness of the deed was proved by four witnesses besides the writer of the said bond; that had his statement regarding the execution of the deed been untrue, the defendants would not have failed to object to the registration of the deed, that the fact of the said Lalmohun being defendants' servant is proved by the gomashita and halsuhna of the defendants' village; that the witness Lalmohun's brother was not brought by him but by the defendants, who must have tampered with him, and that the signatures of the defendants on the deed agreed with their signatures on their vakalutnamehs.

The kistbundee or instalment bond on which the appellant rests his claim is a suspicious one, and the sudder ameen has given good reasons for distrusting it. There has, moreover, been a fraudulent addition made to the deed since its execution. The name of a witness has been inserted—Agnoo Khan, whose name was evidently not on the bond when it was executed. The name is not in the register book in which the deed was registered. Regarding this forgery separate instructions will be conveyed to the sudder

ameen. I see no cause for interference with the sudder ameen's decision, which I therefore confirm, dismissing the appeal, with costs.

THE 22ND MAY 1850.

No. 64 of 1850.

*Regular Appeal from the decision of Buboo Gooroopershad Bose,
Moonsiff of Kandhee.*

Ramdhun Dutt, (Plaintiff,) Appellant,

versus

Pran Doss Ailpauter, (Defendant,) Respondent.

SUIT for the recovery of a loan of principal, Company's rupees 3, and interest 4 annas, 10 pie, total Company's rupees 3-4-10, instituted 12th November 1849, and decided 23rd March 1850.

The plaintiff states that the defendant, on the 8th Falgoon 1255 B. S., took a loan from him of 3 rupees in his shop at Nuggur Attai, without executing any written agreement, and promised to pay the amount within the year, but failed to fulfil his promise.

The defendant denied the debt, and pleaded that had the money been advanced to him by the plaintiff he would not have failed to enter it in his khata buhee; that the fact was this, that he, the defendant, with one Khoodeeram Koonai, was once detained in custody by the zemindar's gomashtha on a charge of theft, and that the plaintiff's son, Gooroochurn Dutt, borrowed 3 rupees from the gomashtha, and then paid it to the gomashtha, to obtain the said Khoodeeram's release.

The moonsiff, upon the ground that the plaintiff could not substantiate his claim by documentary evidence, and that the pleas of the defendant were entitled to credit, dismissed the suit, with costs.

The plaintiff urges, in his appeal, that his claim was in a manner proved by the defendants' answer; that the moonsiff, contrary to law and the rules of practice, sent for the defendants' witnesses and not those on his part, and that he sent for the defendants' witnesses through his nazir without taking an issumnuvessee from the defendant.

The moonsiff's proceedings in this case were very irregular. He had no authority to send for the defendants' witnesses through his nazir without the usual issumnuvessee. This was contrary to the Circular Order of the 13th September 1843. He ought also to have sent for the witnesses of the plaintiff. His decision is incomplete, and I therefore admit the appeal, and remand the case for re-trial. The value of the stamp in appeal to be returned to the appellant.

THE 23RD MAY 1850.

No. 12 of 1850.

*Regular Appeal from the decision of Moulvee Momtaz Alli, Moonsiff
of Gowas.*

Nocouree Sheikh, (Defendant,) Appellant,

versus

Kashenath Sircar, (Plaintiff,) Respondent.

CLAIM, for the recovery of balance of account, principal Company's rupees 11, 7 annas, 5 gundahs, and interest Company's rupees 2, annas 9, gundahs 15, total Company's rupees 14, anna 1, instituted on the 10th August 1849, and decided 28th December 1849.

The plaintiff states that the defendant borrowed from him 43 rupees, and paid in iron and cash on different dates Company's rupees 31-8-15, but failed to pay the remainder.

The defendant denied the claim. He pleaded that he had together with his brother borrowed 15 rupees from the plaintiff under a bond in 1251 B. S., that the amount was paid, and the bond returned, that the plaintiff was indebted to him for the hire of a cart, and when he demanded what was due he brought this false action against him.

The moonsiff gave a decree in favor of the plaintiff; and the defendant has appealed from his decision.

The claim of the plaintiff depends entirely on the genuineness of the khatta buhee. The stamped extract appended to the nuthee shows an account against the defendant, but it is not signed by him, nor is it drawn up as such accounts generally are. If the khatta buhee is a *bonâ fide* shop account book, and free from suspicion, the defendant will be liable for the balance. The moonsiff should have directed a local enquiry in order to ascertain this point, particularly as there is no receipt or acknowledgment on the part of the defendant. The appeal is admitted, and the case will be remanded to the moonsiff for re-trial. The value of the stamp in appeal to be returned to the appellant.

THE 23RD MAY 1850.

No. 13 of 1850.

*Regular Appeal from the decision of Moulvee Momtaz Alli, Moonsiff
of Gowas.*

Nocouree Sheikh, (Defendant,) Appellant,

versus

Kashenath Sircar, (Plaintiff,) Respondent.

CLAIM, for the recovery of a balance of debt, laid at Company's rupees 8, 11 pie, instituted 10th August 1849, and decided 28th December 1849.

The plaintiff rested his claim upon his khatta buhee.

The defendant denied the debt, and pleaded that the suit was brought against him to deprive him of what was due to him from the plaintiff on account of cart hire.

The moonsiff decreed the case in favor of the plaintiff; and the defendant appealed from his decision.

This case is similar to case No. 12 of 1850. A local enquiry should have been instituted by the moonsiff, to prove the genuineness of the khatta buhee on which the plaintiff's claim is founded. The appeal is admitted, and the case remanded for re-trial. The value of the stamp in appeal to be returned to the appellant.

THE 25TH MAY 1850.

No. 1 of 1850.

Regular Appeal from the decision of Moulvee Syed Abdool Wahid Khan Bahadoor, first grade Principal Sudder Ameen of Moorshedabad.

Goolab Chand Doogur, (Plaintiff,) Appellant,

versus

Inder Chunder Bothra and others, (Defendants,) Respondents.

SUIT, for the recovery of a balance of debt, principal and interest, rupees 3561, annas 3, instituted 18th September 1843, decided 8th December 1844.

The plaintiff sets forth that the plaintiff kept up a trading account in his khata buhee at Baloochur kotee with Josroo Bothra, Zalim Singh Bothra, and Bukhtawur Singh Bothra, in the names of Josroo and Bukhtawur, that, on adjustment of accounts in 1876 Sumbut, there was a balance against them and in favor of the plaintiff of Company's rupees 2025, annas 5; that the defendants failed to pay this balance and died, leaving Inder Chunder Bothra and others, their heirs, in possession of their property; that the khata were renewed in their names, and that they paid on different dates Company's rupees 335, but failed to make good the balance of the debt.

The defendant Inder Chunder, in his answer, denied the debt, and pleaded *an alibi*, and stated that the defendant, in order to evade the statute of limitations had made a false entry of the above payments.

Hoolas Chand defendant also denied the debt, and pleaded his minority in 1241 B. S.

The plaintiff, in his replication, added that the defendants' fathers were his servants and relations, and as they had promised to make good the balance due, he had refrained from suing against them for so long a period.

The principal sudder ameen considered that the plaintiff had by the evidence of his witnesses established the fact of having carried

on a trading account in his khata buhees with the defendants' fathers, and that the accounts were correct with the exception of the payments in 1242 B. S. He therefore gave a decree in favor of the plaintiff against the property of the defendants' fathers, but not against the defendants personally.

The plaintiff appealed from this decision, urging chiefly, in his appeal, that, as the principal sudder ameen was satisfied of the truth of the fact of his having had a trading account with the deceased fathers of the defendants, and gave a decree on that ground, and as the defendants had renewed the accounts in their own names, they should not have been exempted from the liability of the decree; that the evidence of the witnesses, which satisfied him on the point of trade, was sufficient to prove the renewing of the khatas in the names of the defendants and the payments made by them, as well as the fact of their possession of their fathers' property.

There is an irregularity in the proceedings of the principal sudder ameen, which is a bar to the consideration of this case on its merits. He specified particular documentary evidence which the plaintiff was to produce, and he omitted to sign a proceeding dated 1st May 1844. As this was contrary to Regulation XXVI. 1814, and the Circular Order of the 13th September 1843, I admit the appeal, and remand the case for re-trial. The stamp value of the petition in appeal to be returned to the appellant. The respondent to pay his own costs.

THE 27TH MAY 1850.

No. 14 of 1850.

*Regular Appeal from the decision of Baboo Petumber Mookerjee,
Moonsiff of Zeagunge.*

Gooroodyal Shaho, (Defendant,) Appellant,

versus

Kalleechurn Doss Mundul, (Plaintiff,) Respondent.

CLAIM, for recovery of a debt, calculated from 1246 to 1249 B. S., to the amount of principal and interest Company's rupees 220-11-5, instituted 25th August 1848, and decided 26th December 1849.

The plaint sets forth that the defendant supplied the plaintiff with grain, rice, &c., the plaintiff advancing him money, and keeping an open account with him in his khata buhee in his aurut at Mahinuggur, that, on adjusting the accounts from 1246 to 1249 B. S., the plaintiff found, on the 2nd Srabun 1249 B. S., a balance of rupees 149-5 due to him, which the defendant admitted, and promised to pay within fifteen days, either in cash or goods; that in Maugh 1250 B. S., the defendant paid rupees 32-13, but failed to

pay the remainder, Sicca rupees 116-3-5, and this action was therefore brought against him.

The defendant, in his answer, admitted the dealings, but pleaded that on the alleged day of adjustment, he was at Onoopnuggur Shumseregunge, that he supplied the said articles to the plaintiff through his gomashṭa, and that the plaintiff, being unable to pay 302-3-5, which was due to the defendant, executed a hat chittah through his gomashṭa attesting the same with his *mark* or signature; that he, the plaintiff, paid the defendant rupees 73-12, and for the remainder executed another ikrar on the 4th Maugh 1250 B. S., by which he bound himself to liquidate the balance within the year; but, failing to fulfil the terms of the ikrar, the defendant was about to sue against him, when he, the plaintiff, anticipated the suit by bringing this false action against him, the defendant.

The plaintiff, in his replication, added that the defendant attempted to compromise the case before several respectable witnesses. In his supplementary plaint he applied for the correction of an error in the defendant's name, Gooroodyal instead of Geo-roochurn.

The moonsiff gave a decree in favor of the plaintiff in part for the principal, on the ground that although by the evidence of his witnesses the truth of his claim was established, yet as he had derived advantage from the articles supplied by the defendant he was not entitled to interest.

The defendant appeals from this decision, on the following grounds: that the moonsiff ought to have nonsuited the case agreeably to the Circular Order, dated 3rd June 1847, that of the four witnesses on the part of the plaintiff, two were not inhabitants of the place where the dealings were carried on, and that the other two were plaintiff's servants, that they contradicted the plaintiff regarding the place where the accounts were adjusted, and that the case was decided against him notwithstanding the execution of the documents alluded to by him in his answer was satisfactorily proved by witnesses, whose evidence was taken in the presence of an ameen deputed to the spot.

In this case the moonsiff was irregular in adjudging the costs of the serving of two italanamehs instead of one against the defendant, and in not adjudging the costs of one of the italanamehs to the plaintiff. I admit the appeal, therefore, without reference to the merits of the case, agreeably to Regulation IX. 1831, and remand the case for re-trial. The stamp value of the petition in appeal to be returned to the appellant.

THE 27TH MAY 1850.

No. 16 of 1850.

*Regular Appeal from the decision of Baboo Petumber Mookerjea,
Moonsiff of Zeeagunge.*

Kallee Churn Doss, (Plaintiff,) Appellant,

versus

Gooroodyal Shaha, (Defendant,) Respondent.

SUIT for the recovery of a debt as per khata buhee from 1246 to 1249 B. S., to the amount of principal with interest Sicca rupees 220-9-5, instituted 25th August 1848, decided 26th December 1849.

This case is similar to case No. 14 of 1850.

The plaintiff appeals from the decision of the moonsiff, on the ground chiefly that, notwithstanding his claim was proved to the satisfaction of the moonsiff, he obtained a decree only for the principal, and not for the interest, contrary to the provisions of Regulation XV. 1793.

The order given in appeal No. 14 of 1850, is applicable also to this case. The appeal is therefore admitted, and the case remanded for re-trial. The value of the stamp in appeal to be returned to the appellant.

THE 27TH MAY 1850.

No. 58 of 1850.

*Regular Appeal from the decision of Baboo Tarrakishen Haldar,
Moonsiff of Jungypore.*

Dewanut Mollah and Koodrut Mollah, (Defendants,) Appellants,

versus

Benode Mundul, (Plaintiff,) Respondent.

SUIT for the recovery of a bond debt, principal Company's rupees 108 and interest Company's rupees 38, 6 annas, 3 pie, total Company's rupees 146-6-3, instituted 18th July 1849, and decided 21st March 1850.

According to the plaint the defendants borrowed from the plaintiff Company's rupees 129, and executed a bond for the amount on the 2nd Aughun 1253 B. S. They paid 21 rupees on different dates, and left a balance of 108 rupees due to the plaintiff.

The debt was denied by the defendants, who pleaded that they had on different dates paid Company's rupees 43, on account of two other bonds, that the plaintiff had received and entered the same in his khata buhee, but had not closed the account; that in consequence of a dispute between them the plaintiff assaulted Koodrut Mollah

defendant, and that Koodrut Mollah complained against the plaintiff in the magistrate's court, and that the plaintiff had compromised the matter in the presence of the following witnesses, Mr. Mascarenhas, Ramruttun Bose Mooktear, and Gholam Keebreah, duftree of the judge's court.

The plaintiff replied that he had no khata buhee, and that the defendants were ready to compromise the case after its institution.

The moonsiff considered the evidence on the part of the plaintiff sufficient to establish his claim, and gave a decree in his favor.

The defendants appealed from this decision, pointing out discrepancies in the evidence of the plaintiff's witnesses, and stating that being advised by Mr. Mascarenhas to save their property by the sacrifice of a part, they, the defendants, agreed to pay a certain sum to the plaintiff after the institution of the suit, knowing that the plaintiff would have no difficulty in proving a false bond by false witnesses, and obtaining a decree against their property.

The appellants have shown no ground why the moonsiff's decision should be disturbed. The bond is sworn to by witnesses to its execution. The plea of the defendants that they were indebted on account of other bonds, which were paid off, and that the bond, on which the plaintiff rests his claim, is a forged one, is not supported, and they admit moreover that after the institution of the suit they tried to effect a compromise. It is not likely they would have attempted this, had they not been indebted. The appeal is therefore dismissed, and the moonsiff's decision confirmed.

THE 28TH MAY 1850.

No. 2 of 1847.

Regular Appeal from the decision of Moulvee Syed Abdool Wahid Khan Bahadoor, first grade Principal Sudder Ameen of Moorshedabad.

Doorgamonce Dibeah, mother and guardian of Bejo Loll Roy and Kylas Chunder Roy, minors, (Defendant,) Appellant,

versus

Ram Tunoo Bhuttacharj, father and guardian of Doorgakaunt Bhuttacharj, (Plaintiff,) Respondent.

SUIT for the recovery of the possession of a zemindaree, &c., with mesne profits, valued at Company's rupees 2740, annas 13, pie 8, instituted 23rd June 1845, decided 19th March 1847.

The plaint sets forth that Gopal Churn Surmah Roy, having no heirs to inherit his property, brought up Doorgakaunt, minor, the son of the plaintiff his near relation, caused the ceremony of tonsure to be performed at his own expense, and made over to him all his personal and real property by a deed of gift on the 29th Joist 1251 B. B., which deed was duly registered, that on the 7th Assar

of the same year Gopal died, and the plaintiff took possession of all the movable and immovable property left by the said Gopal in virtue of the said deed of gift, with the exception of 6 annas, 5 gundahs share of the zemindaree of pergunnah Moorareepore, pergunnah Behrolle, turuf Metahparrah and Nij Metahparrah, kismut Gur Shama, kismut Goorah, and kismut Paslah, kismut Neemgaon, and 9 beegahs out of 18 beegahs of brumutter land in mouzah Barakaree with the trees on it, and beegahs 65, cottahs 17, gundahs 3, of dewutter land, being Gopal Churn's share out of beegahs 131, cottahs 14, gundahs 4, in kismut Goorah, resumed by Government, and for which under settlement with Government he paid rupees 3, annas 12, pie 10, annual jumma; that the defendant Doorgamonee, in combination with Gopeenath Mundul, ijaradar of Gopal Churn's share, and his malzamin Sonatun Mundul, forcibly prevented the plaintiff from taking possession; that a koruk sezawul on the part of the plaintiff complained against Ramchunder Mundul and others under Regulation V. 1812, when the defendant Doorgamonee preferred a claim to the collector of the district, urging her sons' right of inheritance to the property left by Gopal Churn, and the case was dismissed by the collector; that the defendant in consequence dispossessed the plaintiff, from Gopal Churn's share of the zemindaree, &c., and realized the rents for the year 1251 B. S. The plaintiff, therefore, brought this action against the defendant.

The defendant Doorgamonee, as guardian of her minor sons, filed an answer, pleading that, as the plaintiff had not sued for the whole of the property specified in the alleged deed of gift, his demand being a divided one was not cognizable, that the deceased Gopal Churn had not transferred his share of all the property by deed of gift to the plaintiff's son, that the fact was established by the following circumstances, that the plaintiff's statement of Gopal's share of the debutter and bruhmutter lands was not correct, that the alleged deed contained no clause empowering the plaintiff's son to perform the funeral ceremonies of the deceased, that it was not attested by priests, ryots, and zemindars' servants; that it contained no mention of the ijarah, that the defendant's husband and the deceased Gopal were connected by blood, being descended from the same ancestors; that under the Hindoo shasters, surads, &c., were performed by the defendant's sons, that if bewustahs were called for her assertion of her sons being the rightful heirs to the deceased Gopal would be proved, that the said Gopal was in a state of insensibility or delirium for about a fortnight before his death, that consequently it was improbable he had executed the said deed, that the defendant had objected in a petition to the registration of the deed, but was referred by the register to a competent court, that since the death of the said Gopal the defendant had been enjoying possession of all the zemindaree, &c., left by him.

The plaintiff, in his replication, added that there was no necessity to sue for that part which he had in his possession, and that it can-

not affect the suit; that Gopal before his death had given *ammulnamahs* to the ryots and zemindars' agents; that he had also written to the *ijaradars* directing them to attend to the plaintiff's son as they would to himself; that as the *ijaradars* had not obeyed these instructions, the plaintiff included them as defendants in the suit; that the defendant's statement of Gopal's being in a state of delirium was not true, for he was in a tranquil state of mind and had the *shasters* read to him by his priest; that the petition presented by the defendant before the register would prove her admission of the execution of the deed.

The principal *sudder ameen* considered the deed of gift filed by the plaintiff sufficiently proved by the evidence of witnesses on his part; and that there was no case for the defendant. He relied on the *bewastahs* of the *pundits* of Dacca and 24-Pergunnahs, which were in favor of the plaintiff's claim, the *bewustah* of the *pundits* of Moorshedabad differing from them, and therefore decreed for the plaintiff.

The defendant appealed from this decision, urging nearly the same grounds as were set forth in her answer. before the lower court, laying stress on the opinion of the *pundits* that any gift made otherwise than for the *future good* of the deceased was inconsistent with the *shasters*, that the disputed deed contained no clause empowering the plaintiff's son to perform the funeral ceremonies of the deceased, and he had not performed them; that he was still a minor, and was incapable therefore of performing such *good services* as were required; that it was proved by the plaintiff's witnesses, Gungapershad, Ramdhun, Sonatun, and Tunoah Chowkeedar, that the deceased was infirm, had lost his sight, and was insensible before his death, that the *bewustahs* of the *pundits* of 24-Pergunnahs and Dacca declared that it was necessary to the validity of such a deed that the person executing it should be in a sound and tranquil state of mind; that her son's right of inheritance to the property of the deceased was materially affected by the principal *sudder ameen's* decision; that the signature on the deed was not that of the deceased, as he was old, blind, and infirm, and unable to write so good a hand; that the defendant had requested his signature might be compared with his handwriting on other papers, which was not attended to; that the difference of the name of a witness in the registered deed was not reconciled, and the register book and the writer not sent for and examined, as the defendant also requested.

The plaintiff's case entirely depends upon the registered *dan putter*, or deed of gift, filed by him. As some suspicion attaches to this deed, and the principal *sudder ameen* did not sufficiently investigate the point, when brought to his notice by the (defendant) appellant, I cannot enter into the merits of the case until the suspicion is removed. If the deed is invalid, the plaintiff's case falls to the ground.

Amongst the witnesses to the registered deed put in evidence by the plaintiff is the name of Tunoah Chowkeedar, resident of Balool. But in the register books, where the deed was registered, this name does not appear, and in the duplicate deed, attested also by the register, the name of the witness appears to have been *subsequently* entered.

The principal sudder ameen considered that the non-insertion of the name of the witness in the register was an accidental omission on the part of the register mohurir: should this have been the case, the name must have been afterwards inserted in the *duplicate* deed to make it correspond exactly with the *original* stamped deed entered by the plaintiff.

If this can be satisfactorily proved, the *original* deed to all intents and purposes would be valid. The principal sudder ameen's investigation of this material point is incomplete. The mooktear and the two witnesses, who were present when the original deed was registered and the duplicate attested by the register, should have been sent for and examined. The principal sudder ameen should with reference to this point have examined the witness himself, whose name was subsequently inserted in the duplicate, as well as the other witnesses whose names were attached to the deed.

There is besides an irregularity in this case, which escaped the notice of the principal sudder ameen. The defendant has put in evidence a copy of the original deed upon insufficient stamp, contrary to Art 20, Schedule A., Section 3, Regulation X. 1829. Regarding the penalty attached to the filing of such a document, the principal sudder ameen is referred to Construction No. 1120 of the 15th December 1837.

I therefore admit the appeal with reference to these points, and remand the case to the principal sudder ameen for re-trial. The value of the stamp on the petition of appeal to be returned to the appellant.

THE 28TH MAY 1850.

No. 10 of 1850.

Regular Appeal from the decision of Moulvee Momtaz Alli, Moonsiff of Gowas.

Torab Mundul, (Defendant,) Appellant,

versus

Tetool Sheikh Mundul, (Plaintiff,) Respondent.

SUIT for the recovery of Company's rupees 2-4, or half the price of mulberry leaves sold at rupees 4½, instituted 4th September 1849, decided 28th December 1849.

The plaint stated that the plaintiff had purchased the mulberry leaves of 5½ beegahs of mulberry cultivation, for 4½ rupees, from

one Mamlut Mundul, and sold half to the defendant, who failed to pay for the same.

The defendant admitted the purchase, but pleaded payment.

The moonsiff decreed for the plaintiff.

The defendant appeals from his decision, on the ground that one of his witnesses acknowledged the service of the subpoena and did not appear, and the others could not be pointed out, and he applied for a further period to cause their attendance, which the moonsiff would not allow.

The appellant shows good grounds for his appeal. One of his witnesses acknowledged the service of the subpoena, and stated that he would present himself in two days. On the second day, the moonsiff decided the case. He should have allowed further time, and if the witness did not appear it was his duty under Section 6, Regulation IV. 1793 to procure his attendance. Too short a time was also granted to the defendant (appellant) to procure the attendance of his other two witnesses. I therefore admit the appeal, and remand the case for re-trial. The value of the stamp in appeal to be returned to the appellant.

THE 30TH MAY 1850.

No. 53 of 1850.

Regular Appeal from the decision of Moulvée Momtaz Alli, Moonsiff of Gowas.

Harradhun Haldar, (Plaintiff,) Appellant,

versus

Shahamut Sheikh, (Defendant,) Respondent.

SUIT for the recovery of a bond debt, principal Company's rupees 5, and interest 3 annas 3 pie, total Company's rupees 5, 3 annas, 3 pie, instituted 6th August 1849, and decided 14th March 1850.

The plaint sets forth that the defendant borrowed the sum of 5 rupees from the plaintiff, and executed a bond on the 23rd Chyete 1255 B. S., agreeing to pay the amount in Bysakh 1256 B. S., but failed to do so.

The defendant denied the debt, and stated that he lived at a distance of 10 coss from the plaintiff, and that this action was brought against him in consequence of a quarrel with plaintiff.

The moonsiff dismissed the suit, with half the defendant's costs against the plaintiff, on the ground that six weeks had elapsed, and the plaintiff had not produced his bond.

The plaintiff, in his appeal from this decision, urges that the bond being executed on stamp paper of inadequate value, the plaintiff applied to the collector for a proper stamp to be put upon it, that the plaintiff had produced no acknowledgment from the collector

to satisfy the moonsiff that the deed was with the collector, and consequently could not be presented so soon as was required; that the moonsiff dismissed the suit, whereas, agreeably to the Circular Order of the 7th January 1842, he could allow him a certain period to produce the bond, that now he has obtained the bond, that the moonsiff did not call for an isumnuvesec of his witnesses within six weeks though he was ready to file it within that period.

The plaintiff appears to have done all in his power to produce the bond duly stamped before the moonsiff, and the delay in procuring the stamp through the collector's office was not owing to any remissness on his part. As the moonsiff was in possession of the collector's acknowledgment, that the deed had been entered in his office for the purpose of being stamped, he should have granted the plaintiff further indulgence. The appeal is therefore admitted, and the case remanded for re-trial. The stamp value of the petition in appeal to be returned to appellant.

ZILLAIH MYMENSING.

PRESENT: R. E. CUNLIFFE, Esq., JUDGE.

THE 3RD MAY 1850.

No. 28 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 9th April 1849.

Rajkishwur Bhattacharj, (Defendant,) Appellant,

versus

Tarramunee Dibea, after her, Jymunnee Dibea, (Plaintiff,) Respondent.

RESPONDENT states her mother-in-law, Narainee Dibea, had claims on bonds against the appellant's father, which were settled on the 12th Assin 1246, at rupees 926, of which rupees 625 were then paid, and a kistbundee for Sicca rupees 301, which he has failed to pay, and that Narainee Dibea gave her the kistbundee, when she went to Benares in 1249, where she died.

Appellant denied executing the kistbundee, and alleged his father went to Dacca on the 7th Assin 1246, and remained there till the 25th of the same month, for the purpose of being attended by a doctor in the employ of Government; that during the time of Sheeb Chunder Chowdhry, respondent's father-in-law, his father, had borrowed rupees 625 from him on bond, and after his death, during the time Narainee Dibea had charge of the estate, his uncle, Nubkishwur, on the 12th Assin 1236, settled it at rupees 926, paid rupees 625, and gave a kistbundee for 301, which was duly paid, but not returned, as it could not be found, and that the reason, that this suit has been got up against him is that, in the disputes between respondent's husband and his brother, his father and uncle took the brother's part.

Respondent denied the alleged transactions of 1236.

The principal sudder ameen decreed in favor of respondent, as the kistbundee had been proved, and because the appellant's witnesses were not worthy of credit, for though appellant did not state what complaint his father was labouring under when he went to Dacca, some of his witnesses say one thing, and some another, and they are his dependents, servants and boatmen, except Kaleechunder, who says he is a doctor, but does not say he is in

Government employ, and it is a very suspicious circumstance that though appellant says he resided at Dacca, in the house of the sherishtadar of the commissioner of Dacca, named him as a witness, and filed questions to be put to him, but did not cause his evidence to be taken.

In appeal, it was urged that respondent's witnesses are her dependents; that Hingoo says the bonds for which the kistbundee was given were of 1246, and if so, it is impossible the interest could have amounted to rupees 577; that Suleem said that Goluck Chung was one of the witnesses to the kistbundee, which he is not; that Goluck Chung said appellant was 25 or 30, when he demanded payment, but he is only 19 now; that on the back of the kistbundee a piece of paper has been pasted, so that it might not be found out that it has been lately written on old paper; that Kalee Chunder is in Government employ, and that his witnesses are not his dependents, and that the evidence of the sherishtadar was not taken, because it was doubtful whether the court would have placed confidence in it as he was appellant's father's disciple. The last objection is a frivolous one. The appellant should have left it to the court to accept or reject the evidence of the sherishtadar; and for my part I should have placed more reliance on it than on that of a whole crew of boatmen. Notwithstanding the little discrepancies noticed by appellant in the evidence for the respondent, I see no reason to doubt that the claim is an honest one. No part of the kistbundee appears to have been lately written on an old stamp, except perhaps where the amount is written in words. Accordingly, the principal sudder ameen's decision is affirmed, and the appeal dismissed, with costs.

THE 3RD MAY 1850.

No. 29 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 5th April 1849.

Mr. G. M. Gasper, (Defendant, with others,) Appellants,

versus

Kaleepershād Day, Pauper, (Plaintiff,) Respondent.

RESPONDENT sued to obtain possession, with wasilaut, of 2 annas, gundahs 13 1-1 of a talook in the name of Kishenpershad Dea, in kismut Bilkooa, in the zemindarce of the appellant and the other defendants, alleging he had been dispossessed by them from Bysack 1242.

Appellant, among other matter, replied that the suit was barred by lapse of time, not having been instituted for 12 years and 8 days after dispossession.

Respondent replied that he had brought his plaint to the sherishtadar on the 22nd Chyte 1253, who returned it as it was not accom-

panied by the necessary security; but that both plaint and security were filed on the 9th Bysack.

The officiating principal sudder ameen having ruled that the suit was not barred by lapse of time, the principal sudder ameen decided in favor of respondent. The same objections in regard to the suit being barred by lapse of time having been urged in appeal it must be decreed, for Clause 1, Section 6, Regulation XXVIII. 1814, declares the courts are empowered to admit a plaintiff to sue as a pauper, on his finding two good and sufficient securities; therefore, the taking the plaint without security, as respondent admits, to the sherishtadar, cannot be considered the institution of the suit, and by respondent's own showing it appears that he filed the plaint and security on the 9th Bysack 1254, or 8 days beyond 12 years from the date of dis-possession. The decision of the principal sudder ameen is reversed, and the appeal decreed, with costs.

THE 3RD MAY 1850.

No. 31 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Amcen of Zillah Mymensing, dated the 9th April 1849.

Mr. Brodie, (Defendant,) Appellant,

versus

Kishenmohun Neogee and four others, (Plaintiffs,) Respondents.

RESPONDENTS sued for possession, with wasilaut, of 1 pie of a talook in mouzah Doobail, in the name of Sumboo Chunder Singh, and of a talook in the name of Sham Churn Singh, in tuppa Russoolpore, under a deed of sale, dated 28th Bysack 1252, and that the estate being attached by order of the civil court the appellant had taken a farm of it.

The principal sudder amcen decreed in favor of the respondents, from which decision the appellant has appealed; but it is unnecessary to enter into the merits of the case, as the appellant has only made four out of the five plaintiffs (respondents,) and the appeal must therefore be dismissed, with costs, as incomplete, in conformity to Circular Order of the 1st July 1842.

THE 3RD MAY 1850.

No. 32 of 1849.

*Appeal from the decision of Pundit Nurhurree Seromonee, Principal
Sudder Ameen of Zillah Mymensing, dated the 13th April 1849.*

Hur Indurnarain Rae, (Defendant, with others,) Appellants,

versus

Bhyrub Indurnarain Rae, (Plaintiff,) Respondent.

RESPONDENT states there is a talook in the names of Sabitree and Nubdoorga Dibeā, in mouzah Jyrampoor, in his zemindaree, at a jumma of rupees 292-8-6, which being sold, it was bought by Brijkishwur Rae, and respondent having sued the Dibeā and the Rae for arrears of rent for 1253, under Regulation VII. 1799, the Rae said he had purchased it for Ranee Bhobunmye, on which his claim was rejected, and he now sues the appellant, who, as her adopted son, has succeeded to her property, and is in possession of the talook:

Appellant replied he only obtained possession from 1255, and that he is not liable for his mother's debts.

The principal sudder ameen decreed the sum claimed, as the appellant admits possession, and does not allege the rent has been paid, and that it is due has been proved by respondent's witnesses, and as the appellant is in possession as her heir, he is liable for arrears of rent due by the ranee, and that the precedent of the Sudder Dewanny has nothing to do with the case.

In appeal, the same objection was set forth, and on referring to the precedent I find it cannot affect this case, as in that case the debt arose from a personal loan. The appellant, having succeeded to the property on the death of his mother, is undoubtedly liable for arrears of rent due from the talook. The principal sudder ameen's decision is affirmed, and the appeal dismissed, with costs.

THE 6TH MAY 1850.

Nos. 34, 39, 49, and 52 of 1849.

*Appeals from the decision of Pundit Nurhurree Seromonee, Principal
Sudder Ameen of Zillah Mymensing, dated the 17th May 1849.*

Genda Dibeas, widow of Koonjbeharee Tewaree, (Defendant,) Appellant No. 1, in Appeal No. 52,

Goureesunkur Tewaree, (Defendant,) Appellant No. 2, in Appeal No. 52,

Seebdeen Misr, (Defendant,) Appellant No. 3, in Appeal No. 39,
Scebnarain Sookul, (Defendant,) Appellant No. 4, in Appeal No. 49,

Nundmohun Chowdhry, (Defendant,) Appellant No. 5, in Appeal No. 34,

versus

Mootrapershad Tewaree, Gokul Tewaree, and Oudbeharee Tewaree, (Plaintiffs,) Respondents.

RESPONDENTS state they, and appellant No. 2, and others, were partners of a house of business, and lent appellant No. 5, on the 13th Poos 1244, Sicca rupees 1,400 on a bond, on 10th Phalgun 1244, 2,000 Sicca rupees on a bond, and on the 26th Bysack 1245, 3,600 rupees, on two bonds; that the bonds were in the name of appellant No. 3, their gomashta, and the money advanced from the joint property of the house, that appellant No. 5, not paying, they were about to sue, when disputes arising with their gomashta, appellant No. 3, regarding the transactions of the kotee, they were referred to and settled by arbitrators at Dacca, after which appellant No. 5 instituted a suit against them, appellant No. 2, and others, for the return of the above bonds, stating they had been realized by appellant No. 3, from certain farms, to which respondents replied the money was still due, but appellants Nos. 1 and 2 admitted that 7,000 rupees, with interest, had been paid by the farmer, and the bonds given up to him, which he had retained, as large sums were due to him, and that appellant No. 3 and the farmer filed answers to the same purport, on which appellant No. 5 withdrew the suit; that there is collusion between appellant No. 5, our partners, and the farmer, and as the money was joint property, they are entitled to rupees 1,440 on account of their 3 annas share of the bonds for rupees 3,600.

Appellant No. 5 admitted having borrowed the 7,000 rupees, and alleged he had paid through the farmer of his estates rupees 11,406, and the bonds not being returned, he sued the partners and others, and the partners, appellants, and the farmer admitted he had paid appellant No. 3, who also, in his answer in the arbitration case, admitted having received it.

Answer of appellant No. 3. That respondents and their partners filed a petition in the arbitration case, not only giving him a release from all demands on account of the money, bonds, &c., of which he had charge as their gomashtha, but admitted that rupees 6,045 was due to him by them, and for which sum a decree was passed by the arbitrators in his favor, which he has realized by taking out execution thereof, and that the respondents and their partners in execution of a decree against appellant No. 5, on a bond in his name, again admitted a settlement of accounts with him.

Answer of appellant No. 4. That appellant No. 5 had let certain farms to his ancestor, who had, by his directions, paid off these bonds, and retained them for a settlement of his own accounts with appellant No. 5, and placed them in the hands of a third party, which is admitted by appellants Nos. 2 and 3, in the suit instituted by appellant No. 5, and the latter also admitted in the arbitration case having received rupees 11,604-12-10, on account of these bonds.

Answer of appellants Nos. 1 and 2, admitted having filed a petition in the the arbitration case as alleged in the answer of appellant No. 3, settling all accounts with him, and also in the suit instituted by appellant No. 5; that the amount of these bonds had been realized through the farmer, and the bonds released.

Respondents, in reply to appellant No. 5, states that in the chitta of outstanding debts filed by appellant No. 3, in the arbitration case, rupees 11,932-8-3 were entered as due from appellant No. 5.

Respondents, in reply to appellant No. 3. That appellant No. 3, in his petition of the 9th Aughun 1253, admitted he was liable for all decrees, bonds, &c., which he had realized; if the sums so realized were not entered in the account-books, or endorsed on the documents themselves, and as the amount of these bonds is not entered in our account books, &c., we have not received our share, and that on account of disputes existing between the partners these bonds were placed in a chest, one key of which was retained by them and one by appellant No. 2, and others, and that it cannot be opened without their concurrence.

Respondents, in reply to appellant No. 4. That he has not stated with whom the released bonds had been placed.

Appellant No. 2 rejoined, that if the bonds had been placed in a chest, of which respondents and himself held separate keys, how have they been able to file them in this suit, and denied that they had received the bonds from appellant No. 3, and that the rupees 11,932-8-1, entered in the chitta as due from appellant No. 5, are not on account of these bonds, the amount of which was realized before 1249.

The principal sudder ameen decreed the sum claimed, as appellant No. 5, admitting borrowing the money, alleged that it has been paid, but it does not appear from the copy of the petition filed by respondents in the arbitration case that they have received their share of the

amount of the bonds, and if appellants Nos. 3 and 4, or the partners, had paid plaintiffs their share, the bonds would not have remained in their hands, and appellants Nos. 4 and 5 would have released them, and it is surprising that the payment was not endorsed on the back of them; and though, from the answer of appellant No. 3, in the arbitration case, it appears that he admits having received rupees 11,057 4-10, on account of those bonds, and said it was entered in the khata in the name of appellant No. 2; but since it appears that sum has not been paid to the respondents, appellants Nos. 3, 4 and 5, cannot be released from the claim, and as appellant No. 3 has stated, in his answer in the arbitration case, that the money had been received and entered in the khata in the name of Goureesunkur, it would appear that it had not been carried to the credit of all the partners, and if that khata-bhuc had been filed, it might have been investigated; that the defendants' partners are liable, as they admitted, in the suit instituted by appellant No. 5, that the money was paid by the ijaradar, and have not also stated that they had not received it, and that appellant No. 5, would not have withdrawn his suit without having received back his bonds, or got respondents to file a petition, admitting receipt of the money, and decreed the sum claimed against all the defendants.

After a careful perusal of all the papers of the case I have come to a different conclusion on the merits of it. The respondents assert they have not received their share of these bonds, in which the principal sudder ameen coincides; because, *first*, it does not appear from the copy of the petition filed by respondents, in the arbitration case, that they had received their share of these bonds.

Secondly. If they had, the bonds would not have remained in their hands, and that it is singular the payment was not recorded on the back of them.

Thirdly. That it appears from appellant's (No. 3) answer in the arbitration case, that the money had been credited in a khata in the name of Goureesunkur, and accordingly not entered in the khata of all the partners.

Fourthly. That appellant No. 5 would not have withdrawn his suit without return of the bonds, or without the respondents' having filed a petition, admitting receipt of the money.

The arguments for non-receipt of the respondents' share of these bonds I cannot concur in. It is admitted by all that appellant No. 3, was the gomashta of the respondents, appellant No. 2, and others, partners of the kotee, and that he lent 7,000 rupees to appellant No. 5. Disputes having arisen between the parties of the kotee and their gomashta, the matters in dispute were placed in the hands of arbitrators for decision, and they were decided on the grounds of petitions filed by the partners of the kotee, and by their gomashta on the 9th Aghun 1253; that of the respondents of the 14th Maugh being to the same purport. In the petition of the partners they not only state they have received

from the gomashtha all documents, decrees, bonds, &c. &c., but admit that a sum of rupees 6,045 is due to him from them, and the gomashtha, in his petition, states that the partners gave him a farkhuttee in Phalagoon 1249, and that he has given up to them all documents, decrees, bonds, &c. &c., but remained liable for any sums he had received, which had not been duly brought to credit, and both parties requested a decree might be passed accordingly. This, the principal sudder ameen observes, does not prove that the respondents have received their share of these bonds, nor does it; but in the answer of the gomashtha in the arbitration case it is distinctly stated that the amount of these bonds had been received and brought to credit in the khata, in the name of Goureesunkur, which the principal sudder ameen considers is not the khata of all the partners. Now of two things there can be little doubt. After the gomashtha had, in his answer, stated the money had been received and credited in the khata, in the name of Goureesunkur, if that khata was not that of all the partners, or if they were not satisfied that they had received their share of these bonds, they never would have filed the petition on which the arbitration case was decided, and rupees 6,045 decreed against them as due to the gomashtha. The respondents' statement, that they have not received their share of these bonds, as it has not been credited in their khata, is a fraudulent one, as they have not filed it, or stated in what name or names the books of their kotee were kept, or why they had a separate one? The manner too in which the respondents have got possession of these bonds is extremely suspicious, for it is absurd to suppose that they were among those made over to them by the gomashtha, at the settlement of the disputes with him; for the money having been duly paid, as stated in his answer in that case, he had no further business with them, they would have been in the hands of appellant No. 5 or No. 4, and there is great reason to suspect that they have been given to respondents by the latter for the purpose of this suit, for he has not stated why they were put into the hands of a third party and to whom entrusted, neither have respondents explained how they got them out of the box, one key of which was held by them and the other by appellant No. 2, nor in whose charge this box was. With regard to the argument that appellant No. 5 would not have withdrawn his suit without return of the bonds, or a petition admitting payment being filed by respondents, it is sufficient to observe that he was satisfied by the admission of the 13 annas shareholders of the kotee, appellant No. 3, and of the farmer, through whom the payments were made, and it is not improbable that he was also aware that the payment by his farmer, of these bonds, had been admitted by the partners and gomashtha in the arbitration case.

The respondents, in their reply to the answer of appellants Nos. 5 and 3, would appear to assert that the sum of rupees 11,931-8-3, entered in the list of outstanding debts due from

appellant No. 5, is on account of these funds; but the receipt of respondent No. 2, dated 6th Assin 1254, for his share of rupees 10,700-12, which had been realized from appellant No. 5, and in deposit in the court, clearly proves that nearly the whole sum entered in the list as due from appellant No. 5, had been realized, and therefore the debt in the list could not be on account of these bonds. Considering respondents' claim unfounded, the decision of the principal sudder ameen is reversed, and the appeals decreed, with costs, and under the provisions of Construction No. 997, the defendant Lall Beharee Tewaree is released from the claim, and his costs will be charged to the respondents.

THE 6TH MAY 1850.

Nos. 35, 38, 47, and 51 of 1849.

Appeals from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 17th May 1849.

Genda Dibea and Goureesunkur Tewaree, (Defendants,) Appellants in case No. 51,

Seebdeen Misr, (Defendant,) Appellant in case No. 38,

Seebnarain Sookul, (Defendant,) Appellant in case No. 47,

Nundmohun Chowdhry, (Defendant,) Appellant in case No. 35,

versus

Mootrapershad Tewaree and others, (Plaintiffs,) Respondents.

THIS case being exactly similar, except as to the amount of the bond and the sum sued for, as that of appeals Nos. 52, 39, 49, and 34, the decision of the principal sudder ameen is reversed, and all the appeals decreed, with costs, and under the provisions of Construction No. 997, the defendant Lall Beharee Tewaree is released from the claim, and his costs will be charged to the respondents, and a copy of the decision in the abovementioned appeals will be filed with this suit.

THE 6TH MAY 1850.

Nos. 63, 37, 48, and 50 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 17th May 1849.

Genda Dibea and Gourcesunkur Tewarce, (Defendants,) Appellants in case No. 50,

Seebdeen Misr, (Defendant,) Appellant in case No. 37,

Seebnarain Sookul, (Defendant,) Appellant in case No. 48,

Nundinohun Chowdhry, (Defendant,) Appellant in case No. 36,

versus

Mootrapershad Tewarce and others, (Plaintiffs,) Respondents.

THE case being exactly similar, except as to the amount of the bond and the sum sued for, as that of appeals 52, 39, 49, and 34, the decision of the principal sudder ameen is reversed, and all the appeals decreed, with costs, and under the provisions of Construction No. 997, the defendant Lall Beharree Tewarce is released from the claim, and his costs will be charged to the respondents, and a copy of the decision in the abovementioned appeals will be filed with this suit.

THE 7TH MAY 1850.

No. 41 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 12th May 1849.

Zumurdonissa Khanum, (Plaintiff,) Appellant,

versus

Nowruttun Beebee, (Defendant,) Respondent.

APPELLANT sued to obtain possession, with wasilaut, of 4 annas kismut Tetulea, in talook Kookryle, &c., which had been sold to her for rupees 330 by the respondents on the 23rd Aughun 1253, and the kuballa registered, and of which foreclosure was effected on the 28th January 1848. Respondent replied that, being desirous of obtaining rupees 330 on conditional sale of this property, she sent her people to the appellant's husband, Sadut Allee Khan, who consented to advance the money on receiving interest at 2 per cent. per mensem, to which she agreed, and that he got the kuballa and two mooktarnamahs written and sent them to her by his omlah, Gooroochurn Surma; that she sealed them, but he wishing to deduct the interest, she refused to deliver them and gave them to her khansamah, Juppoo, and the Khan, having got over her khansamah and others, obtained possession of them; that no notice of

foreclosure was served upon her, and that the witnesses to the service of it are not those whose names are on the sooruthal, but the appellant's ryots and servants.

Appellant replied that respondent came to her house, received the money, and executed the kuballa, and that notice was duly served upon her.

The principal sudder ameen dismissed the claim, on the grounds that in disposing of property persons who can write and have a seal, both sign and seal, as is shown by the respondent's mooktarnamah of the 23rd Phalgun 1255, and the witnesses, who gave evidence at the time of registry, say she signed the kuballa, but say nothing of sealing it, and it is suspicious that it was registered by a mooktear of the name of Niamut Allec, while it appears that the appellant's and her husband's mooktear is Nijabut Allec. That the witnesses to the transaction say they did not see the respondent, but recognized her voice, as she sat behind a purdah, but still say they saw the appellant give respondent the money in a bag, and besides being all the appellant's husband's servants and dependents. Ramgovind says respondent came to the edge of the purdah, and put out her hand and face and gave the money to Bagerut, while all the others say she was sitting outside the purdah, and Sheik Niamut says Sadut Allec Khan was present, but none of the others say anything about it.

In appeal, it is urged that two of the respondent's witnesses know nothing about her defence, and another had established their claim, and that respondent frequently only seals documents. I see no reason to interfere with the decision of the principal sudder ameen, for, though all the respondent's witnesses may not have proved her case, appellant's witnesses have not proved her's, for what reliance can be placed upon her witnesses, one of whom says respondent was behind the purdah, which would be the case, for she is a respectable lady, a zemindar, as well as appellant, and if it was necessary for one to be behind the purdah, it was equally so for the other, while all the witnesses say she was outside the purdah. The principal sudder ameen's decision is affirmed, and the appeal dismissed, with costs.

THE 7TH MAY 1850.

No. 42 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 9th May 1849.

Messrs. Wise and Glass, (Defendants,) Appellants,

versus

Bhobunisseree Dibca and others, (Plaintiffs,) Respondents.

RESPONDENTS sued to obtain possession, with wasilaut, of bund Gyapar, in which are beels Gya Luckye Kooree *alias* Luckye

Koonee, and Kilakoorce, and lands around them, in amount about 150 pooras, appertaining to mouzah Olelee, their kharija talook, in tuppa Runbliawal, joar Kurwadee, according to the map and urzee of Mr. Bird, kooruck surbarakar, in a suit under Regulation II. 1819, of 6 annas, 8 gundas, 2 krants of joar Burmee, and to cancel an order under Regulation XV. 1824, giving possession of the lands in dispute to the appellants, and state that appellant being about to include the lands of Ramkoomar Chuckee's talook, in mouzah Dobail, in their zemindaree, a suit was instituted under Regulation XV., when Gopalpershad Mitter, ameen, was deputed to make a local enquiry, and, without their knowledge, made a map and roedad, stating the lands to be in appellants' possession, on which one of the respondents filed objections before the joint magistrate, who, without taking evidence to them, passed an order giving appellants possession, from which he appealed, and the case was remanded to take evidence in support of their objections, when a similar order was passed on the 22nd May 1839, from which an appeal having been preferred, the case was again remanded to take evidence to their kubooleuts, and to strike their lands out of the map; and that after the evidence of Sheikh Baker, Sheikh Buddul, and Sheikh Kanul, who had given the kubooleuts, had been taken in the presence of the nooktears of both parties, appellants, without their knowledge, brought three persons to personate the abovementioned ryots, who attended of themselves and caused their evidence to be taken, and the magistrate upheld his former order, and on appeal the judge, after sending for their vakeel and before he attended, struck the case off the file on the 29th April 1840; that in the suit under Regulation II. 1819, notice was only served upon the respondents and others, and their possession was proved by a local investigation made by Goluckehunder Bul, and that the special deputy collector also went to the spot, made a map, and after taking the evidence of respectable unconnected persons, and from the chittas, &c. filed by them, considering their long possession proved, dismissed the claim of Government. The boundaries of the lands in dispute are stated to be: east, Damna Nuddee,—north, the khall to the south of mouzah Dobail and Dopeekanda, and Chepaghat,—west, Borye Dair of mouzah Negwyr,—south, Damna Nuddee and Borye Dair.

The answer of appellants is that the lands in dispute belong to bund Gya, in bheel Makul, in the 7 annas zemindaree of pergunnah Bowal, which they hold partly by purchase and partly in farm, and that the boundary between mouzah Olelee and Beel Makul is the Damna river, on the east of which is the respondents' talook Olelee, and on the west, bheel Makul and the other bheels belonging to it, and on the south, Borye Dair, and never were in the respondents' possession; that from the time of Kaleepershad Rae and his shareholders and their ancestors, proprietors of the 7 annas share, they have had possession; that Kaleekishwur Rae sold them 17 gundas 2 cowries,

and Roodranath Rae 1 anna 19-3-1½ krants, and the other shareholders have given them a farm of the rest of the 7 annas, of which they have had possession from the last six months of 1243, and that the suit is barred by lapse of time; that the foudaree order did not give them possession, but merely upheld their possession, and that order fixed the boundaries between the two mouzalis as stated by them; and that although the judge ordered the land to be struck out of the map after taking evidence to the kubooleuts, but on proof of our possession of the land by the ryots of the land, our possession was upheld by the judge; that the magistrate sent for the ryots, Kamul, Buddul and others, and the respondents brought three others during the absence of our mooktear, and after the ryots attended and gave evidence in our favor, our possession was upheld; that the suit under Regulation II. 1819 was decided on the 26th October 1840, and the first order of the magistrate is the 27th November 1838; that while the suit under Regulation II. was under investigation, the respondents pointing out the lands in dispute as adjoining mouzah Olelec they concealed Damna Nuddee and Borye Dair, and though they filed a map made by the ameen, the special deputy collector, after sending for the Regulation XV. case, rejected it, and did not himself make a map, and was not authorized to investigate any other matter than the right to resume on the part of Government, and why were the chittas, &c. not adduced in the suit under Regulation XV; in which too respondents did not mention these beels, and in the punjsala of mouzah Olelec there are only 47 pooras entered while the respondents have possession of 4 or 500 pooras.

Respondents replied that they had long had possession, and were only dispossessed from the date stated, that the persons, who gave them kubooleuts, Sheikh Baker and others, were sent for by the magistrate and on the 8th October 1839 their depositions were taken before the mooktears of both parties, and that Rajehunder Bhuttacharje, appellants' mooktear, wrote "present" on them; that the Regulation II. suit was instituted on the 6th May 1836, and the Regulation XV. on the 18th May 1838; that the same mouzah is often on both sides of a river, and that the special deputy collector went to the spot, saw it, and caused a map to be made, and that appellants attended and filed objections in that case; and in regard to the beels not having been mentioned in the Regulation XV. case, and that case they requested that bund Gya, in which these beels are situated, should be releasid.

The principal sudder ameen decreed in favor of respondents, as it was proved by the evidence adduced by them that they had long had possession of the land in dispute, until dispossessed by appellants, and that they belong to a mouzah Olelec, and that the boundaries between the two mouzahs are those stated by respondents, and not those stated by appellants; and that appellants' objection that it is improbable there would be land belonging to the

same mouzah on both sides of the river, is frivolous, as it is a common occurrence; that no reliance can be placed on the evidence of the appellants' witnesses on account of discrepancies, and most of them being their dependents, and that appellants have filed no proof of how much of the seven annas pergunnah Bawal they have purchased, or when, and the same as regards the farm. It having been urged in appeal that the principal sudder ameen had decided the suit before the return of a subpoena for some of the appellants' witnesses, residing in the district of Dacca, on reference to the nuthee I find the objection raised is correct, the suit having been decided on the 9th May 1849, while the return was only made on the 25th of that month. The appeal is accordingly decreed and the suit remanded to the principal sudder ameen, to decide on its merits after allowing the appellants an opportunity to have the evidence of the witnesses taken for whom a subpoena had been issued and the return not made when the suit was decided.

THE 10TH MAY 1850.

Nos. 43 and 44 of 1849.

Appeals from the decision of Pundit Nurhuree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 15th May 1849.

Omasoondree Dossea, (Plaintiff,) Appellant in case No. 43,

versus

Koornomye Dossea, Defendant No. 1, Birgoram Chuckladar, Defendant No. 2, and Phedoo Shah, Defendant No. 3, (Defendants,) Appellants in case No. 43.

APPELLANT sued to obtain possession, with wasilaut, of 2 annas, gundahs 15-1-1 of talook Neaz Ullee, the right and interest of Syed Abdool Basud, sold by the collector on the 24th Bysack 1243, in execution of the decree of defendant No. 1, stating that she and defendant No. 1 appointed Obhychurn Mojoomdar to purchase in equal shares for both of them, and presented a petition to the collector to that effect, who directed them to pay cash for it; that it was bought for both for rupees 2,020, and defendant No. 1 being unable to pay for the stamp and the deposit money she paid, and, on the sale being confirmed by the commissioner, she applied for a bynamah in her name alone, and defendant No. 1 also, on the 1st Bhadoon 1243, presented a petition giving up to her interest in the purchase, and she paid the whole of the price, on which the collector made a reference to the commissioner, who decided it was improper to give the bynamah in the name of one person only; that Abdool Hafiz sued to cancel the sale, but his suit was dismissed by the principal sudder ameen, and his appeal to the Sudder Dewanny struck off on default, and that appellants Nos. 2 and 3

and others put in many petitions, objecting to the sale, claiming to have purchased the property from Abdool Hafiz, who, they stated, had obtained it by deed of gift from Abdool Basud, but their objections were overruled by the principal sudder ameen, and his orders upheld by the Sudder Dewanny.

Answer of defendant No. 1. That both purchased the property, and after the sale she obtained an order of the civil court, directing the collector to credit her with half the purchase money, deducting that sum from the amount of her decree, and to return half the purchase money to the plaintiff, and that half the purchase money was accordingly deducted from the amount of her decree; denied having given any petition giving up her share of the purchase, or that her mooktar had any authority to give such a petition, and that she frequently petitioned the collector for a bynamah in the names of both.

Answer of appellants Nos. 2 and 3. That they and others had on the 12th Assar 1237 purchased from Abdool Hafiz 1 anna of the talook, viz., defendant No. 2, $7\frac{1}{2}$ gundas, appellant No. 3, 5 gundas, Gorachand, Kishenram 5 gundas, and Ramnath Deb $2\frac{1}{2}$ gundas, for rupees 5,994, and obtained possession, and on the plaintiff requesting the property should be sold they objected, got it released, and also an order to sell the 10 cowrees share of Abdool Basud, which was alone sold.

Plaintiff replied that she is solely entitled to the property for if she had not paid the deposit, the sale would not have been confirmed, and if she had not paid the whole of the purchase money the deposit would have been forfeited, and that the petition giving up defendant No. 1's share of the purchase was presented by the same mooktar who bought the property, and that Abdool Hafiz had no right to dispose of the property, as stated by appellants Nos. 2 and 3.

Abdool Hafiz filed a petition, admitting the sale to appellants Nos. 2 and 3 and others, and though his suit to cancel the sale under a deed of gift was dismissed, he sued for the same purpose under right of inheritance, which suit was nonsuited, but he is about to sue afresh.

The principal sudder ameen dismissed plaintiff's claim and overruled appellants Nos. 2 and 3's objections, because he did not consider it proved that plaintiff had paid the whole of the price, as from the roobakarees of the principal sudder ameen of 6th October, and of the collector of the 27th December 1836, and defendant No. 1's receipt, it appeared that the property was purchased for plaintiff and defendant No. 1, and that, after the sale had been confirmed by order of the civil court, half of the purchase money was deducted from the amount of defendant No. 1's decree, and the plaintiff was directed to receive back half of the purchase money she had paid in, while the terms of the mooktarnamah did not authorize the mooktear to give up her interest in the purchase, and the roobakaree of the principal

sudder ameen of the 11th August 1836, and those of the judge of the 19th September and 7th October 1837, and of the Sudder Dewanny of the 5th December 1838, and the lotbunder show that the rights and interest of Abdool Basud, consisting of 2 annas, 15 gundas, 3 cowrees, were sold, and that appellant No. 2 and others' objections that the collector had sold the rights and interests, while he was only directed to sell the 10 cowrees share of Abdool Basud, were rejected, and the sale confirmed, and from the fysala of the principal sudder ameen of 4th December 1843 it appears that the alleged hiba of Abdool Hafiz was rejected, and accordingly the purchase of appellants Nos. 2 and 3 from him is invalid, and with regard to the fysala of the principal sudder ameen of the 25th August 1843 it does not appear that any enquiry was made into the hiba.

In appeal, it was urged by (plaintiff) appellant that a judge cannot order the purchase money to be deducted from the amount of the decreedar's claim ten months after the sale, and accordingly her right to the property is good exclusive of the relinquishment by defendant No. 1. Appellants Nos. 2 and 3 urged that they got a decree for 2 annas of the talook, and possession, and though their names have not been recorded in the collectorate records, their rights cannot be affected by the omission.

It is unnecessary to pass any decision on the three first points, as appellants Nos. 2 and 3 are released from this claim on other grounds.

From the roobakaree of the principal sudder ameen of the 4th August 1834, it is evident that the collector was directed to sell a 10 cowrees share of the talook, and he was not authorized to sell a larger portion of the property, nor had the civil court after the sale power to confirm the sale of the whole of the rights and interests of Abdool Basud, which the collector thought proper to dispose of, for though Section 3, Regulation XLV. 1793, directs the Board of Revenue "to dispose of such portion of the lands of the party against whom the decree may be given, as may be sufficient to make good the amount of it," and from which it might be supposed that it was quite optional to the Board of Revenue what portion to dispose of, but that section is modified by Clause 1, Section 4, Regulation VII. 1825, which enacts additional rules respecting sales in execution of decrees, and one of the rules is that when it may be necessary to have recourse to a sale of landed property the court shall send a copy and translation of the decree to the Board of Revenue, together with a statement of the lands which the person entitled to benefit of the decree may point out as belonging to the person from whom it may be demanded, and the collector shall be instructed to select for the sale any part of the lands included in the statement, which gives the collector no power to sell any thing not included in that statement, therefore the sale can only be held

good for 10 cowrees of the talook. With regard to the last point, whether the plaintiff is entitled to the whole of the property sold or not, there can be no doubt she is entitled to the whole of it, for although decreeholders are permitted to give a receipt in part or full payment of their decrees for the amount of the purchase money, it is necessary under Construction No. 1187 and Circular 22nd March 1839, to obtain the previous permission of the civil court so to do, but they have no authority to grant such permission after the sale. The defendant Koornamye Dassea relies upon the agreement to purchase jointly, but, not having previous to the sale obtained the permission of the court to debit her decree to the amount of her purchase money, she ought to have paid cash. Accordingly both the appeals are decreed, and the principal sudder ameen's decision reversed.

The collector will grant a byenamah for 10 cowries of the property to the plaintiff alone who will receive wasilaut in proportion and pay the costs of appellants Nos. 2 and 3, and plaintiff and defendant Koornamye will each pay their own costs as they have unjustly claimed more than was legally sold.

ZILLAH NUDDEA.

PRESENT: J. C. BROWN, Esq., JUDGE.

THE 9TH MAY 1850.

Case No. 109 of 1846.

Regular Appeal from a decision passed by Baboo Ramlochan Ghose Rai Buhadoor, Principal Sudder Ameen of Zillah Nuddea, on the 30th of May 1846.

Kurreemooddeen Mahomed and Nuffer Chunder Rae, (Defendants),
Appellants,

versus

Khoddeeram Rae, (Plaintiff,) Respondent.

THIS suit has been brought for the recovery of 1,661 rupees, 13 annas, on account of mesne profits, from the commencement of 1234 to 13th of Kartikh 1237 B. Æ., of a four annas share of mouzah Rae Ballee Nerainpore.

On the 30th of December 1829, corresponding with 16th Poos 1236 B. Æ., the plaintiff (respondent) obtained a decree in his favor for the proprietary right to 4 annas, or one-fourth, of the villages abovenamed. The decree was appealed from to the provincial court and specially to the Court of Sudder Dewany Adawlut, where it was finally disposed of on the 28th of January 1836, corresponding with 16th of Maugh 1242 B. Æ. In that suit, which was decreed against the defendants (appellants,) it was ordered that the plaintiff was to have the mesne profits for the time he was out of possession paid to him by the defendants.

The plaintiff obtained possession on the 13th of Kartikh 1237, but could not obtain payment of the mesne profits on account of the case being pending in appeal: after it was decided, the defendants (appellants) procrastinated for a length of time to make the payment decreed, and the plaintiff was at last forced to institute this suit, and thus to force payment.

The defendants contested the plaintiff's claim, which, they (amongst other reasons, which had already been decided upon) urged, was inadmissible under the provisions of Section 14, Regulation III. 1793, and of Regulation II. 1805.

The principal sudder ameen has decided that the plaintiff brought his suit within the period limited by law, as 12 years had not expired from the date of the final decree.

The principal sudder ameen has further given as his reasons for deciding the suit in favor of the plaintiff, that it is acknowledged by all the parties that the guardians of Kurreemooddeen gave a lease of the entire of mouzah Rae Ballee Nerainpore to Hurchunder Rae, on the security of Bitchoo Singh; that it was underlet to Nuffurchunder Rae on the security of Bishonath Rae; and that it was proved by official documents; that, on the 19th of February 1831, Musst. Kowsilla, the widow of Hurchunder Rae, the ijaradar, and Nuffurchunder Rae, the kutkeenadar, petitioned the late provincial court of appeal to stay the execution of the zillah decree, and they remained in possession of the entire estate, and received all the rents up to the time of the plaintiff obtaining possession of his one-fourth share in 1237, and it is further proved that Nuffurchunder Rae as kutkeenadar received from the court treasury, where it was in deposit, rupees 3,115, 14 annas, 11 gundahs, on account of revenue of the said muhal, for the years 1234, 1235, and 1236 B. Æ. The plaintiff having only claimed one-fourth of that sum, the principal sudder ameer considered him fully entitled to it, also to an equal sum on account of interest, which he decreed against Kurreemooddeen and Nuffurchunder Rae, the kutkeenadar. The plaintiff not having included the deceased ijaradar, Hurchunder Rae, or his heirs in his plaint, he could not obtain any order against them, and he having given no proof that Bitchoo Singh was the security of Hurchunder or Bishonath of Nuffurchunder, the latter, and Kalleepurshad Rae, son of Bitchoo Singh, must be exempted from the payment of any part of the claim.

The appellant Kurreemooddeen objects to the decree being passed against him, because he states that when there was a dispute for possession the magistrate ordered that the kutkeenadar was to have possession, and pay the rent to the ijaradar and the ijaradar to the proprietor, and that the plaintiff, as proprietor of the fourth share, should have secured his rents at the time from the ijaradar.

Nuffurchunder grounds his appeal on the magistrate's order, which was that the kutkeenadar was to pay rent to the ijaradar, and he was to pay the proprietor, and therefore that the plaintiff can only claim the mesne profits from the ijaradar.

I consider both the objections as futile. Kurreemooddeen's guardians gave the whole estate in farm to Hurchunder, and their acts must be binding on him. If therefore that farmer has not paid the plaintiff his right dues, the party who gave the farm must make them good. Again, the under-farmer, who has been proved to have received the amount of revenue for the estate, cannot expect to be exempted from payment of what is due to the plaintiff (respondent,) merely because the magistrate passed an illegal order, and one which was not, under the provisions of Regulation XV. 1824, within his competency to pass. I consider that the decree of the principal sudder ameen is perfectly just and legal, and that the appeal is frivolous and vexa-

tious. It is therefore ordered, that the appeal is dismissed, and the principal sudder ameen's decree confirmed, with full costs and interest, which is to be calculated according to the rules laid down in Circular Orders of 4th March 1836 and 12th August 1842.

THE 14TH MAY 1850.

Case No. 68 of 1850.

Regular Appeal from a decision passed by Syud Suadut Hoosain, Moonsiff stationed at Dowlutgunge, on the 6th of March 1850.

Purshuno Moi Dossee and Gopee Mohun Mitr, (Defendants,) Appellants,

versus

Muddun Mohun Mitr, (Plaintiff,) Respondent.

THE suit was brought to recover value of paddy advanced to Gopee Mohun Mitr and his father, Nund Comar Mitr, by the plaintiff.

The suit was instituted on 5th January 1850, and the notice issued for the attendance of the defendants on the 9th idem. On the 25th of January, the defendants not having appeared, an ishtehar was ordered to be issued for their attendance, which was returned as executed the same day, and the evidence of the witnesses who saw it promulgated was taken on the 15th of February. On the 20th of February, the plaintiff was called on to exhibit his proofs, and the order was passed for hearing the case *ex parte*. The proofs were given in on the 2nd of March, and the same day the evidence of the witnesses in support of the plaintiff was recorded. On the 6th idem the defendant, Purshunno Moi Dossee, appeared by vakeel, and stated that, being a purda nusheen female, she had not been informed of the suit, and having just become acquainted with the fact of a suit being pending, she was desirous of giving her answer in, but the moonsiff would not admit her pleading, and adjudged the case against her the same day, which was exactly two months after it was instituted.

The female defendant has appealed, on the grounds of ignorance of the issue of the proclamation, and Gopee Mohun, on the grounds that he was employed in the Jessore district when the notice and proclamation were issued.

It is evident from a perusal of the record that there was a great deal of unnecessary hurry used in the disposal of this suit; besides which I am of opinion that the evidence of the witnesses, who have given evidence regarding the issuing of the proclamation, is unworthy of credit. The moonsiff had 59 suits of 1846, 1847, and 1849 pending on his file, and yet he hastened this suit without any good or sufficient cause shown.

Being of opinion that the admission of the appellants' defence and of any evidence they may have to produce, is material to the just decision of this suit,—under the provisions of Section 2, Regulation IX. 1831, I return this case to the place it had on the moonsiff's file, to be re-investigated after receiving the defendants' repudiation of the claim and any evidence they may offer in support of it.

The value of the stamp for preferring the appeal is to be returned to the appellants.

THE 14TH MAY 1850.

Case No. 69 of 1850.

Regular Appeal from a decision passed by Syud Suadut Hoosain, Moon-siff stationed at Dowlutgunge, on the 6th of March 1850.

Ullung Moi Dossee, (Defendant,) Appellant,

versus

Pyaree Mohun Mitr, (Plaintiff,) Respondent.

THE only difference in this case and the preceding one, which has been disposed of this day, is in the names of the parties, and that this is for money lent to the defendant's husband, whereas the other was for paddy. Both the suits were instituted simultaneously, the dates of issuing process, calling for proofs, their being exhibited, the orders passed, and even the witnesses, are the same in both suits.

The reasons given for sending the preceding suit back for further investigation are also good in this, and it is accordingly remanded for re-investigation.

The value of the stamp for the appeal is to be refunded to the appellant.

THE 15TH MAY 1850.

Case No. 68 of 1849.

Regular Appeal from a decision passed by Baboo Gopeenath Bose, Moon-siff of Santipore, on the 29th of June 1849.

Cownullochun Bannerjea, (Defendant,) Appellant,

versus

Issurchunder Turrufdar, (Plaintiff,) Respondent.

THE plaintiff brought his suit for the reversal of a summary decree passed by Oomachurn Bhuttacharje, deputy collector of this district, on the 8th of June 1846, and the moonsiff has reversed it without making any investigation, solely on the grounds that, on the 21st of August 1846, in a suit No. 338 of 1846, in which Nusseeram Chuckerbuttee and another were plaintiffs and Nubkisto

Turrufdar, father of the present respondent, was defendant, the former moonsiff of Santipore decided the suit which was for the same claim, (viz., balance of rent due for 1252, for one and the same land) in favor of the plaintiffs. It appears, however, to have escaped the notice of the moonsiff, when he reversed the summary decree passed by the deputy collector, that the decree passed by the moonsiff in suit No. 338 had been given on insufficient and very suspicious grounds. The moonsiff in that suit called for no evidence from the plaintiff, but decreed it in his favor solely on the admission of the plaintiff's claim by the defendant Nubkisto, which admission was filed on the 18th of June 1846, or ten days after the summary decree had been given against him, of which decree he (the said defendant) was well aware as he had presented a petition, dated the 9th of June 1846, on the 10th idem, through his mookhtear to the deputy collector, complaining of his having decided the claim against him without hearing what he had to say notwithstanding his having filed a mookhtearnamah.

It is therefore evident that the defendant in that suit (the present respondent's father) wilfully and fraudulently admitted the claim of Nusseeram Chuckurbuttee, knowing that the rent for 1252, which was the subject of that claim, had been decreed against him ten days before by the deputy collector.

It was the moonsiff's duty in this case to decide the claim on its merits. The prior claim was that which was instituted under the provisions of Regulation VII. 1799, as it was presented to the collector on the 23rd of April 1846, though it was not decided by the deputy collector in strict conformity with the law, inasmuch as he decreed the claim in favor of the claimant without taking any evidence in support of the demand.

The suit No. 338 was not instituted in the moonsiff's court till 28th of May 1846, and decided by the late moonsiff Sumbhoo Chundur Chattoorjeah, in an equally unsatisfactory manner, as he took no evidence to prove the claim, but decreed solely on the defendant's fraudulent admission of it.

The moonsiff ought in this case, as the respondent brought it to set aside the summary decree above alluded to, to have called on both parties to prove their allegations. The present respondent would have had to prove that the claim made upon him was unjust as he held the land from a third party, and the appellant would have had to prove the kubooleut and former payments of rent by the respondent. Being of opinion that the moonsiff's decree has been based and passed on incorrect grounds, it is therefore, under the provisions of Clause 2, Section 2, Regulation IX. 1831, ordered, that the case is to be remanded to its former place on the moonsiff's file, and that he re-investigate it with reference to the foregoing remarks.

The amount of stamp fees for instituting the appeal is to be refunded to the appellant, and both parties are to pay their own costs, which will be awarded as may be just when the case is finally disposed of.

THE 16TH MAY 1850.

Case No. 74 of 1850.

*Regular Appeal from a decision passed by Baboo Ramcomul Rai Chowdhree,
Moonsiff stationed at Mehurpore, on the 26th March 1850.*

Hubbeeb Khan, (Plaintiff,) Appellant,

versus

Urman Khan and others, (Defendants,) Respondents.

THE plaintiff sued to recover from the defendants 99 rupees, principal, and rupees 49, annas 14, gundahs 7, interest, which, he alleged, was due to him from the defendants on a bond, dated 19th Chyete 1250 B. E.

The defendants denied the debt and the bond, so the plaintiff's proofs were called for.

The first witness states that he was present when the bond was written, the defendants (respondents) were present at the time too. He says that when the bond was written 6 rupees were shown to the defendants, who acknowledged having received the whole money, and the 6 rupees were returned to the plaintiff.

The second witness has said too that he was present, and that the whole 99 rupees was given into the defendants' hands.

The third witness, who says he engrossed the bond, states that 6 rupees were produced at the time the bond was written, with which money the bodies of the defendants were touched, and it was then returned to the plaintiff: he cannot say what the interest to be paid was exactly, but he thought it was perhaps half an anna per rupee. He did not see the money paid to the defendants, and Baool Khan, Mackoo Khan, and Nizabut Khan, whose names are in the bond, were not present, but he, at the plaintiff's and other defendants' desire, wrote their names and made a cross thus X, as if they had signed it.

The moonsiff very properly dismissed the case.

The appellant complains of the injustice of the order, and wants to summon further evidence. The recorded evidence of the three witnesses is so conflicting and unworthy of credit, that the appellant's application is inadmissible. Besides, I am of opinion that illegal interest was intended to be taken if the bond was good, as the wording is perfectly irregular. In bonds it is generally entered that legal, or the usual interest, will be taken, but in this it is stated that the

usual interest on each rupee is to be paid; this may be 1, 2, 3, or 4 pice.

Being of opinion that the plaintiff's bond is a false document, I see no reason to interfere with the moonsiff's decision, nor to take more evidence regarding what I am convinced is entirely a fraudulent transaction. There is therefore no occasion, as provided for in Clause 3, Section 16, Regulation V. 1831, to summon the respondent. Ordered, that the appeal is dismissed, and the moonsiff's order confirmed, notice of which is to be given to the moonsiff.

THE 21ST MAY 1850.

Case No. 137 of 1846.

Regular Appeal from a decision passed by Babao Ram Lockun Ghose Rai Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 22nd of July 1846.

Gungapershad Ghose, (Defendant,) Appellant,

versus

Unnodapershad Bonnerjea and Bamahsoondree Dibe, (Plaintiffs,) Respondents.

THIS suit was brought by the plaintiffs for their share, or one moiety, in a fishery called Cossimpoor, bounded as follows—on the north, from and below Belpookuriah on the Bhaguruttee; on the south, the junction of the old bed of the Bhaguruttee and the present bed, just below Gwalpara; on the east, from and below Gwaree on the Jellinghy or Khurriah river; on the west, by the village of Jannuggur, in the Burdwan district, situated on the western or right bank of the old bed of the river above alluded to, which they lost their rightful possession of in the commencement of 1240 B. Æ., by the execution of an *ex parte* decree obtained by the defendant in the court of the principal sudder ameen, in a suit No. 6697, brought by him against certain parties, who had neither right or interest in the matter, and who in consequence offered no opposition to the claim. The plaintiffs, however, opposed the claim, but the principal sudder ameen paid no attention to their protest, but decreed the portion of the fishery sued for by him in favor of the defendant, (now appellant). The present respondents presented a petition to the judge, who rejected it, on the grounds that they were not a party in the suit, but only opponents, and they were left to institute a regular suit, for their claim, which claim they now bring, for possession, together with mesne profits from the commencement of 1240 to the month of Aughun 1251 B. Æ., amounting in all to Company's rupees 2,891.

The defendant denies the justness of the plaintiff's claim, and states that the junction of the two rivers called Doe Gangooness is not near Gwalpara, but it is the junction of the Bhaguruttee, (called Gunga) and the Jellinghy (called Khurriah) rivers. He allows however that the southern boundary of the plaintiff's fishery and the northern boundary of his (the defendant's) meet a place called the Gwallapara of Jungle Bash.

The plaintiff having already obtained a decree for the fishery of Cossimpoor, that point is not contested, but from the loose way in which Mr. Heyland's and Mr. Hy. Moore's decrees are worded it remains to be decided which is to be considered as the southern boundary of the plaintiff's (respondent's) fishery.

In the suit decided by Mr. Heyland the plaintiff was the same party that has now sued. In the plaint the first mention made of the southern boundary, was that it was Moorah Doe Gangooness, and in the latter part of the same plaint, it was stated more clearly that the plaintiff was entitled to the rights of fishery, commencing from Doe Gangooness under Gwalpara to the ghat of Belpookurriah on the Ganges (i. e. Bhaguruttee). Mr. Heyland called for the boundaries of the Cossimpoor fishery from the collector's office, in which the southern extremity or boundary was entered in the Bengal year 1199, to be Moorah Doe Gangooness. In a map drawn by Prannauth Mookerjee, in suit No. 715 of register's appeals decided by Mr. T. G. Vibart, there is only one place put down as Moorah Doe Gangooness, and which was pointed out by the plaintiffs near Gwalpara.

Considerably higher up the river is the place noted by the defendants (appellants) as Jungle Bash, but there is no Gwallapara to be seen there, nor does the Gwallapara of Jungle Bash appear in any of the documents or papers, except where the defendant (appellant) has brought it in. Mr. T. G. Vibart, a former judge of this district, in his decision of case No. 715, dated the 2nd of May 1832, in which the present appellant was an opponent, declared that the boundary pointed out by him was false, and that the place pointed out by the respondents, in this appeal, was the real southern boundary of the fishery.

The principal sudder ameen has written a very long decision in the case, giving his reasons for deciding in the plaintiff's favor.

It would have been sufficient had he merely referred to Mr. Vibart's decree and decided accordingly. The appellant has objected to the decree in a more prolix manner even. There is no use in giving the whole of the principal sudder ameen's reasons for decreeing in the plaintiff's favor, nor all the appellant's grounds for appealing, as there is a great deal of irrelevant matter in both, and the latter has evidently been composed with the view of distracting the attention, and leading it away from the only point in dispute, namely, *the whereabouts the Moorah Doe Gangooness, which is admitted to be the*

southernmost boundary of the plaintiff's fishery called Cossimpoor, is situated.

This it has been rendered necessary to determine owing to the illegal decree passed by the former principal sudder ameen in an *ex parte* case, in favor of the appellant in this case, above alluded to. The respondents protested against the appellant's claim being entertained, but they were not heard, and there has in consequence been much confusion caused.

I am of opinion that the decree, which is the subject of this appeal, is perfectly consistent with those passed by Messrs. Heyland, Moore, and Vibart, and that the appellant has not shown any good or sufficient reason for its reversal. The only point in the appeal which requires any notice being taken of it, is "that in accordance with a Circular Order of the Court of Sudder Dewanny, dated 11th of January 1839, and Construction No. 744, the judge's decision in suit No. 715, dated the 2nd of May 1832, cannot be considered binding upon him as he was not a party to it." I observe though that the appellant made himself a party to it, by offering objections to the investigation which were then made, which objections were, after due deliberation, set aside as being not proved and untenable. He had it then in his power to institute a regular suit against the present respondents, instead of which he prosecuted a party who allowed the suit to be decided *ex parte*.

Being of opinion for the reasons stated that the principal sudder ameen's decree is perfectly legal and just, and that no sufficient reason has been shown for any interference with it, it is ordered, that the appeal is dismissed, the principal sudder ameen's order confirmed, and the whole of the costs are to be paid by the appellant.

THE 21ST MAY 1850.

Case No. 138 of 1846.

Regular Appeal from a decision passed by Baboo Ramlochun Ghose Rai Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 22nd of July 1846.

Gungapureshad Ghose, (Defendant,) Appellant,

versus

Collee Doss Bannerjea, (Plaintiff,) Respondent.

THIS appeal is on account of a decree passed by the principal sudder ameen, regarding the same fishery, and disposed of in the same manner, and on the same grounds as No. 137, decided this day.

That suit and decree were for 8 annas of the fishery, this is for one-sixth of it.

The reasons given in No. 137, for dismissing the appeal, apply to this.

The respondent in this case is co-sharer of Unnodapershad and Bamasoonduree Dibea. The circumstances and pleading are the same, and a similar judgment is recorded in both by this court.

THE 21ST MAY 1850.

Case No. 139 of 1846.

Regular Appeal from a decision passed by Baboo Ramlochan Ghose Rai Bhadoor, Principal Sudder Ameen of Zillah Nuddea, on the 22nd of July 1846.

Gungapershad Ghose, (Defendant,) Appellant,

versus

Nukoor Munee Dibea, (Plaintiff,) Respondent.

THIS appeal is one from a decision of the principal sudder ameen, which has been noticed at length in case No. 137, decided this day. The plaintiff, now respondent, is co-sharer of Unnodapershad Bannerjea and others, and has a right to one-third in the fishery of Cossimpoor. She has, however, prosecuted only for her right of possession, and not for mesne profits.

The circumstances and pleadings in both suits are the same, and a similar judgment is recorded in both by this court, viz., that the principal sudder ameen's decree is confirmed with full costs, and interest thereon till day of payment, and the appeal dismissed.

THE 28TH MAY 1850.

Case No. 71 of 1850.

Regular Appeal from a decision passed by Baboo Goopeenath Bose, Moonsiff stationed at Santipore, on the 6th of March 1850.

Oomeish Chunder Rae, (Plaintiff,) Appellant,

versus

Parbutty Churn Rae and others, (Defendants,) Respondents.

THIS suit has been instituted by the plaintiff to recover the sum of Company rupees 25, principal, and rupees 7, on account of interest, according to an agreement alleged to have been made by the defendant on the 19th of Assar 1252, corresponding with 22nd June 1846, to the following effect, viz.—“ That they were possessed of certain lands which had been attached by the revenue authority for settlement, and that as they had no funds of their own they borrowed the sum of rupees 25 from the plaintiff's gomashita, to pay any expenses that they might have to incur in obtaining a settlement of the lands in their favor, and that for the accommodation they engaged, when they got the lands, they would let such lands as were fit for indigo to the plaintiff at the factory rates, and that, if there was any delay in the settlement, they

engaged to repay the rupees 25 with interest during the month of Assin in the same year," which agreement the defendants have not acted up to.

The defendants (respondents) deny the whole allegation of the plaintiff (appellant,) and state that as they have a claim on him for land rent, he has brought a counter-claim against them.

The moonsiff has rejected the bond, as it was proved that the stamp paper, on which it was engrossed, had been purchased in Calcutta, some time previous, by the plaintiff, who supplied it to the defendant. This he looked on as a suspicious circumstance.

He further rejected the evidence, because one witness named Teencowrie Biswas, had, in his opinion, stated what was contrary to the truth, and the remaining two witnesses resided at a distance of six miles from where the agreement was said to have been written—besides they were perfectly illiterate, notwithstanding which they stated quite correctly the engagements of the agreement, which satisfied him they had been tutored. He therefore dismissed the plaintiff's suit.

The plaintiff, dissatisfied with the rejection of his claim, has appealed, and has endeavored to answer all the moonsiff's objections.

With regard to the stamp paper, on which the agreement was written, having been purchased in Calcutta, I see no grounds for raising an objection to it on that score, as the practice is a very common one, especially with those who have mercantile concerns and would experience much inconvenience if they had not a stamp paper at command. I agree with the moonsiff that the evidence of the witnesses is unworthy of credit, and more particularly that of Khateer and Shakir, because they say that they were sitting at a distance from where the agreement was written, splitting some bamboos, and their names were entered as subscribing witnesses after the whole of the writing was completed. I do not consider that good and admissible evidence.

The person who wrote the deed is dead, and the man who wrote the plaintiff's account is not forthcoming. It appears from the recorded evidence, and the plaintiff (appellant) has not refused it, that two of the alleged executors of the agreement, named Bhyrubnerain Rae and Mirnomoi Dibe, were not present, but their names were written as if they had signed the deed. This circumstance alone vitiated it, as there is no proof of any authority from the absent parties to any one to sign their names.

There is no clause in the agreement for repaying the money except there should be any delay in the forming of the settlement, and the plaintiff has not sued on those grounds. By the wording of the deed, if he did not get his money, he was to have the land, but that he has not sued for.

I am of opinion that the plaintiff's deed is not proved, and therefore see no reason for altering the moonsiff's decree, and under the

provisions of Clause 3, Section 16, Regulation V. 1831, there is no necessity in consequence to summon the respondents. Ordered, that the appeal is dismissed, and the moonsiff's decree confirmed, of which notice is to be given him.

THE 29TH MAY 1850.

Case No. 77 of 1850.

Regular Appeal from a decision passed by Baboo Gungachurn Sircar, Moon-siff stationed at Hanskhallee, on the 29th of April 1850.

Rammohun Doss, (Defendant,) Appellant;

versus

Jye Lal Mundul, (Plaintiff,) Respondent.

THE plaintiff sued to recover from the defendant the sum of Company's 113, 10 annas, 11 gundahs, 1 cowrie, including principal and interest, due on an instalment bond, dated 24th Kartick 1251 B. Æ., corresponding with 8th November 1844.

The defendant, in his reply, repudiated the claim, and stated amongst other matters, that it would be satisfactory to have the plaintiff's books sent for, and to trace the claim in them. Subsequently to the examination of the plaintiff's witnesses the defendant gave in to the moonsiff, and they are in the nuthee, two petitions, requesting that the writer of the bond might be sent for, to recognize him, as he doubted very much his doing so. The plaintiff's vakeel declined to have a subpoena served on him, and the moonsiff refused to issue the process, in consequence.

The plaintiff, on being called on to produce his khatta-buhee, handed in what is termed a khanphora book, or a set of loose sheets of paper, fastened together by a thread at one corner, which the moonsiff has admitted as collateral proof of the plaintiff's demand, although he took no proof from the plaintiff of the genuineness of the papers.

I consider the moonsiff's proceedings in this case to have been hasty, irregular and incomplete. It was his duty to have caused the attendance of the writer of the bond as requested by the appellant (defendant) in his petition, which the moonsiff rejected on the 2nd of March 1850. Instead of taking the plaintiff's loose jumma-khurch papers, he ought to have required the production of his accounts, and have sworn either the plaintiff or the writer of the accounts to their being genuine.

The statement of the defendant's accounts, or wasil-bakee, is in itself incomplete, for it is without date and bears no signs of the defendant's having examined them previous to writing the instalment bond.

The fresh objections raised by the defendant (appellant) to the plaintiff's claim detailed in the petition of appeal have not been noticed by me, as they are irregular, and would lead to interminable investigations. One request of his is, however, worthy of note, namely, that the plaintiff may make affidavit to the justness of his claim.

With reference to the above remarks it is necessary to return this suit to the moonsiff of Hanskhallē, under the provisions of Clause 2, Section 2, Regulation IX. 1831. It is therefore ordered, that the papers connected with this case be returned to the moonsiff, with orders to restore it to its former place on his file, and, with reference to the above remarks, to try the case *de novo*.

The amount of stamp to be refunded to the appellant, who will now pay his own costs of appeal, and when the suit is finally disposed of, the cost will be awarded as may appear just.

THE 31ST MAY 1850.

Case No. 100 of 1847.

Regular Appeal from a decision passed by Baboo Ramlochan Ghose Rai Buhadoor, Principal Sudder Ameen of Zillah Nuddea, on the 15th of May 1847.

Rammohun Dey Chowdhree, (Plaintiff,) Appellant,

versus

Ishan Chunder Bonnerjea, Ishur Chunder Pal Chowdhree, Jaigopal Pal Chowdhree, and others, (Defendants,) Respondents.

THE plaintiff, now appellant, instituted this suit to recover possession of an orchard of mangoe and jack fruit trees, and the mesne profits during the period of his being out of possession. The suit is laid at rupees 477, annas 9, gundahs 4.

It is stated in the plaint that, at Ranaghat, turruf Ranaghat, the zemindaree of the Pal Chowdhrees, who are defendants, there is a certain orchard of mangoe and jack fruit trees, standing on seven beegahs of land, the annual rent of which is 3 rupees, 8 annas, belonging to the defendant, Ishan Chunder Bonnerjea, which he, on the 17th of Sawun 1233 B. Æ., corresponding with 31st of July 1826, mortgaged conditionally to Bycantrath Dey Chowdhree, the father of the plaintiff, for 430 rupees, and it was verbally agreed between the parties, that the money advanced was to be repaid with interest, and the property redeemed at the expiration of one year. The mortgager failed to act up to the agreement, and in consequence the plaintiff's father presented a petition to the judge under the provisions of Regulation XVII. 1806, to foreclose the mortgage, when the legal

notice was served on Ishan Chunder Bonnerjea, the mortgager. He allowed the period given him by the court to redeem his property to pass over without paying the money, and forfeited all claim to it in consequence; and the plaintiff was about to institute his suit to have himself decreed the rightful owner of the orchard, when the defendant, Ishan Chunder Bonnerjea, prevailed on him to give him 50 rupees more and take undisputed possession, and accordingly an agreement (ikrar) was written on the 19th of Kartick 1245 B. *Æ.*, corresponding with 2nd of November 1838, by which the right and title to the property was transferred from the defendant, Ishan Chunder Bonnerjea, to the plaintiff. After this the plaintiff applied to the zemindars, (the Pal Chowdhrees defendants,) to grant a pottah in his name, and to take the rent from him. This was acceded to by them, and he obtained full and complete possession, paid the rent, for which he obtain acquittances, and disposed of the fruit to other persons, till the month of Chyte 1247 B. *Æ.*, corresponding with March or April 1841, when Neel-comul Pal Chowdhree, the father of Jye Gopal Pal Chowdhree, and others, at the instigation of Ishan Chunder Bonnerjea, forcibly dispossessed him of the property, which he now sues to have restored to him, together with the mesne profits.

Ishan Chunder Bonnerjea replied that, in the month of Sawun 1233 B. *Æ.*, he mortgaged the orchard, which is the subject of this suit, with Bycantnath Dey Chowdhree, the plaintiff's father, for the sum of 400 rupees, and there was a verbal agreement that the money was to be repaid, and the property redeemed in five months. The interest it was agreed was, at the rate of 1 rupee 8 annas per cent. per annum, to be 30 rupees for the five months, and that sum was added to the principal of the bond. He (the defendant) was not able to take up the bond when it was due, but in the month of Poos 1234 B. *Æ.*, (corresponding with December 1827, or January 1828,) he repaid the principal (400 rupees) to Bycantnath Dey Chowdhree, who would not give up the bond, because the interest was not paid. The plaintiff's father subsequently presented a petition to the judge under the provisions of Regulation XVII. 1806, for the foreclosure of the mortgage, in which he omitted to give credit for the 400 rupees received by him. The defendant, Ishan Chunder Bonnerjea, on being served with the notice, filed an answer in which the whole affair was clearly detailed, and the suit for the foreclosure was struck off the file on the 18th of December 1830. Subsequently, on the 18th of Poos 1237 B. *Æ.*, corresponding with 1st of January 1831, the defendant paid Muddenmohun Dey Chowdhree, son of Bycantnath Dey Chowdhree, the sum of 78 rupees on account of interest due to him, and got his receipt for the same, as, on account of the bond having been filed in the court, it could not be returned, which circumstance is embodied in the receipt.

Afterwards the defendant and his brother, Muddunmohun Bonnerjea, having to pay 500 rupees, on account of a debt incurred by their father, sold their right and interest in the orchard, in the month of Assin 1240 B. *Æ.* (corresponding with September or October 1833,) to Neel Comul Pal Chowdhree, resident of Ranaghat, for 500 rupees, and executed a deed of sale in his favor, since which time Neel Comul Pal Chowdhree and his heirs have been in possession. The defendant repudiates the plaintiff's allegation of having paid him (the defendant) 50 rupees more on the 19th of Kartick 1245 (corresponding with 2nd November 1838,) and having taken an ikrarnamah from him.

The plaintiff's rejoinders to the replies, filed by the defendants, contain nothing of any importance, but merely repudiatory of what has been stated by them.

The principal sudder ameen has entered without any occasion into great detail in his decision of this case. It would have been sufficient if he had confined himself to deciding whether the ikrarnamah, dated the 19th of Kartick 1245, filed by the plaintiff, or the receipt for 78 rupees, dated the 18th of Poos 1237, filed by the defendant, Ishan Chunder Bonnerjea, was most worthy of credit. He has, in my opinion, however, very justly dismissed the plaintiff's claim, and the plaintiff, being of course dissatisfied, has in a very lengthy but inconclusive petition appealed.

JUDGMENT.

After due consideration of the plaintiff's (appellant's) case, as shown by his own pleadings and reasons for appeal, I am of opinion that he has not established his claim to the contested orchard, and that the ikrarnamah, dated the 19th of Kartick 1245, is a fabricated document. When his father applied to the court, under the provisions of Regulation XVII. 1806, for an order for the foreclosure of the mortgage he had of the orchard, Ishan Chunder Bonnerjea gave in a very clear and decided disavowal of the plaintiff's claim almost *verbatim*, similar to the reply he has given in this regular suit. The judge was precluded by law from making any summary enquiry in the rights of the case, and passed the only order he could, referring the plaintiff to a regular suit. The plaintiff allowed more than 15 years to pass over without bringing forward any claim to the orchard, and in the 16th year complained that, upwards of four years prior to the date of the institution of his suit, he was ousted by the defendants. To prove his right to the disputed orchard he has filed what he alleges is an ikrarnamah, or agreement, executed by Ishan Chunder Bonnerjea eight years after his summary application to the court had been disposed of, by which it would appear that, although he had in the first instance paid the full value of the orchard, he had most unaccountably paid 50 rupees more to obtain the ikrarnamah, when he might, if his claim had been a just one,

have obtained his end by immediately instituting his suit to obtain possession, or rather to prove his proprietary right to the orchard, when the suit under Regulation XVII. 1806 was disposed of. His story is a most improbable one, and he has failed to prove it, as the only witness who could swear to the ikrarnamah was a servant or dependent of his own, who had never before nor since seen Ishan Chunder Bonnerjea, by his own admission.

Being of opinion that the plaintiff (now appellant) has entirely failed to prove his case, it would be only a waste of time to detail the refutation of his allegations by the defendants (respondents.)

It is therefore sufficient to record that I consider the appellant's appeal groundless and vexatious, and that no good or sufficient cause has been shown to alter the principal sudder ameen's decree in any way. Ordered, that the appeal is dismissed, and the principal sudder ameen's decree confirmed. The respondents, who have appeared by vakeel, without being summoned, must pay any costs they have incurred in so doing themselves.

ZILLAH PATNA.

PRESENT: R. J. LOUGHNAN, Esq., JUDGE.

THE 7TH MAY 1850.

No. 4.

Appeal from a decision passed by Mr. E. DaCosta, Principal Sudder Ameen, passed on the 29th December 1848.

Shoojaet Alli, (Defendant,) Appellant,

versus

Seeta Ram, (Plaintiff,) Respondent.

THIS suit was instituted to recover the sum of rupees 531-13-6, balance due on a bond, with the collateral security of certain lands. The defence set up was that defendant, so far from borrowing the money, Sicca rupees 300, mentioned in the bond, and giving the said bond, was perfectly ignorant of the person, name, and residence of the plaintiff, who was indeed an imaginary person; the real plaintiff being one Koonja Bhugut, who, aided by his partner Chummun, both tenants of the lands mentioned in the bond, wished to defraud the parties, who had purchased them from defendant, of the rents, which they pretended to have been paying to the pretended plaintiff in this case. Plaintiff endeavoured to rebut the statement as to their wish to defraud the so-called purchasers of the lands, by saying that those parties were the wives of defendant and only fictitious purchasers. After the examination of the witnesses of plaintiff, among whom was included Koonja Bhugut, and whom the two witnesses to the bond stated to be the broker or procurer of the loan, the defendant moved the court for the citation of the plaintiff in order that his identity might be enquired into by a petition, the prayer of which, however, was not granted. In this petition he mentioned that he knew of but one man named Seeta Ram of the Ondhea Koormee tribe, who resided in Nongola, the place of residence of plaintiff mentioned in the bond and in the plaint, and he was a pauper utterly without the means of lending such a sum of money. This petition was not attended to, and the principal sudder ameen decreed in favor of the plaintiff.

In the appeal, the defendant repeated the pleas of his answer, and stated in substance the same thing as in the above petition, and urged that, if the principal sudder ameen had attended to the prayer of that petition, the enquiry would have shown that Koonja Bhugut was the real plaintiff; secondly, that even the witnesses, being the partners of Koonja Bhugut, and having an interest in forswearing

themselves, prove by their depositions the forgery of the deed and the institution of the suit in the name of a person now existent, by Koonja Bhugut.

After a vakalutnamah had been put into court on the part of respondent on the 15th March 1849, viz., on the 11th of July 1849, a baznamah was tendered on the part of the appellant, on the ground, alleged in the body of it, of an amicable arrangement with the respondent, as shown in a razeenamah safeenamah put in by two new vakeels on the same day under a vakalutnamah of the same date. The whole of these proceedings were denounced as a fraud in a petition presented by the vakeels already appointed on the part of the respondent on the 15th March, and a person calling himself Seeta Ram, the plaintiff in the cause, in attendance in this court, when interrogatories were put to the parties and their vakeels with a view of investigating this extraordinary affair on the day, viz., 26th July, on which the petition was presented. The other so-called Seeta Ram was also produced at the requisition of the court the next day by the vakeels, Ajoodheca Pershad and Ram Lall, acting under the second vakalutnamah. This man, who gave his name Seeta Ram, son of Domun, inhabitant of Nongola, at once denied the vakeels, and disclaimed the suit and the razeenamah. The vakeels, Ajoodheca Pershad and Ram Lall, admit that they omitted to ascertain from the papers of the case, before they undertook to act for him in giving in the razeenamah, whether he was already represented or not—Ajoodheca Pershad admitting besides that his client told him he had before instructed his agent Koonja Bhugut to appoint vakeels for him. Shoojaet Ali, the appellant, himself declared this Seeta Ram to be the plaintiff, notwithstanding his disclaiming the decree, and saw that he had arranged with him by carrying 300 rupees of the amount of the decree to the credit of loans for which the said Seeta Ram was indebted to him, taken partly before, partly after the institution of the suit, and that Seeta Ram remitted the remainder, but still he maintained that the suit had been instituted through the fraudulency of Koonja Bhugut. Deedar Alli and Hurhungee Lall, appointed vakeels on the part of the respondent, on 15th March, positively identified the other person, calling himself Seeta Ram, with the person who had instituted the suit through them as his pleaders. Deedar Ali said that he was introduced to him by Koonja Bhugut, and mentioned his intention of appointing him his pleader, but did not sign or acknowledge the vakalutnamah in his presence, Koonja Bhuggut having given it to him, Deedar Ali; that, however, he, Seeta Ram, aforesaid, sometimes accompanied Koonja Bhugut, who conducted the suit, and after its institution he himself advanced expenses for carrying it on, and a further reason why he, Deedar Ali, did not think the suit otherwise than really instituted by Seeta Ram himself on his own account was, that he had long known Koonja Bhugut, who introduced him as a man of probity

and respectable character. Hurlungee Lall's statement agrees with this in the main, but shows still more that Koonja took the principal part in carrying through the cause in the court of the principal sudder ameen.

The person whom they call their client, and the plaintiff in the cause gave his name Seeta Ram, son of Hunooman, and his place of residence Pursa. He asserts that he was the lender of the money, and that Shoojaet Ali, the appellant, put Nongola as his place of residence in the bond, notwithstanding his remonstrating, because though he had dealings there he was not resident of that place.

It was so evident that Seeta Ram, son of Domun, had no concern whatever with the transaction before it came before the court of appeal, but had been hired to personate the respondent, and so fraudulently destroy the effect of the decree, that, without going further into the merits of the case between the other ostensible respondent and the appellant, I thought it right to notify the attempted fraud to the magistrate in order that Seeta Ram, son of Domun, his two vakeels, and the appellant, might first be put on their trial in the criminal court.

Still though the case might have proceeded on the disavowal of the razeenamah being made, it was thought expedient to suspend the proceedings in case any new facts might be elicited by the investigation in the criminal court.

There the magistrate having, in his order convicting Shoojaet Ali of fraud, expressed doubts as to the ostensible plaintiff being really the person he represented himself to be, and having indeed put that person on his trial under the name of Sheochurn for a fraud, and convicted him of that offence in having personated Seeta Ram plaintiff, a person not in existence, upon the appeal of Shoojaet Ali to the Sudder Nizamut Adawlut, that Court has directed, in its resolution of the 19th February 1850, that the present appeal should be investigated, especially as to the fact of there being any real Seeta Ram, who was the plaintiff. The facts which the above order no less than the questions raised by the appellant defendant's pleadings, made it requisite that respondent should prove, and which were notified to him in the proceeding of this court, recorded in conformity to Section 10, Regulation XXVI. 1814, were these: that appellant executed the tumusook given in on the part of the plaintiff in favor of, and having borrowed the money from respondent, Seeta Ram, son of Hunooman; and that he (respondent) really instituted the suit. The appellant undertook to prove the contrary, and particularly that no such person as Seeta Ram was plaintiff.

The question whether this is a suit brought under a fictitious name hinges mainly on the question of the so-called plaintiff's name, viz. whether it is Sheochurn, as the appellant by his witnesses in this court has endeavoured to establish, or Seeta Ram, as the

individual himself alleges, and endeavours to prove by the evidence of the witnesses to the bond. Appellant has indeed adduced other evidence of witnesses to show that Koonja Bhugut himself instituted and carried the suit through the court of the principal sudder ameen, having been heard to threaten such proceedings. Respondent, however, has not adduced any evidence specially, that is, solely to the fact that he instituted the suit.

I cannot believe any of the appellant's witnesses. Their statements are for the most part improbable and, inconsistent, and though from the vague terms used they might be supposed at first to be statements of their own knowledge, or of what they actually witnessed, yet they were found to be for the most part nothing but hearsay, when put to the test of a strict cross-questioning. In short, the witnesses who made them were just of that stamp, which might be expected to be brought into court by a man who, as the appellant has done, has contradicted himself at every turn throughout the case, and who, it is quite clear, endeavoured to nullify the decree by getting a person whom he well knew not to be the plaintiff to personate him in the appellate court.

I proceed to examine the evidence adduced both in the lower and in this court by the respondent. In the lower court, but two out of the six subscribing witnesses of the bond were brought forward, viz., Sohun Kulwar and Chummun. These, although they of course had not identified the plaintiff as the lender, were not again called in this court. Tarachund and Shunker, two others of the subscribing witnesses, were brought forward, and their evidence had it stood alone might have been considered sufficient to establish the facts of the person personating the respondent being the lender of rupees 300, upon a bond executed by Shoojaet Ali, and being called Seeta Ram, though not of his being resident, at the time, of Nongola, although Tarachund says he was, though resident of Pursa, then living at Koonja Bhugut's dookan. However, the evidence of the two already examined in the lower court ought also to have been taken in the appeal court, because they stated that they were well acquainted with the lender. One of them, viz., Sohun, is the same who signed plaintiff's name on the vakalutnamah in the principal sudder ameen's court and witnessed that document: there may have been a reason for these witnesses not being brought forward again; they had spoken falsely on solemn declaration, in stating that they knew the lender to have been a permanent resident of Nongola, at the time the money was lent to the defendant, and this, considering the nature of defendant's pleas, was a material point. Sohun, it was perhaps apprehended, might have been questioned as to the reason for his signing plaintiff's name Seeta Ram to the vakalutnamah, when he could have signed for himself as he did upon the vakalutnamah presented in the appeal court. Further, I find that this Sohun's signatures upon his deposition and on the

vakalutnamah do not correspond with that on the bond. Chummun, the second witness, is illiterate, and his signature was written by a person neither a subscribing witness, nor the writer of the bond, and he was the partner of Koonja Bhugut; moreover, Koonja Bhugut himself was called in the lower court as a witness to the whole transaction, though he did not subscribe the bond as a witness, and he is described by the others as the person on whose assurance plaintiff advanced the money at his dookan in Nongola.

From the false statements of these witnesses then, from the plaintiff not having been, as he admits he was not, a resident of Nongola at the date of the bond, from the vakalutnamah in the principal sudder ameen's court not having been signed by his own hand, and having been taken to the vakeels by Koonja Bhugut as they admit, I come to the conclusion, upon strong presumption, first, that the bond was a forgery and the name of Secta Ram used as a precaution by Koonja Bhugut; secondly, that he and not Seeta Ram was the real institutor of the suit. Under these circumstances although had the case not been necessarily tried on its merits before the above conclusion could be come to, the plaintiff should have been nonsuited under the Circular Order of the 29th July 1809, yet such having been the case, I decree this appeal, and, reversing the decision of the principal sudder ameen, dismiss the suit, awarding to appellant costs in both courts from the respondent. All the vakeels engaged in this scandalous case will be called to account for their share in it.

THE 14TH MAY 1850.

No. 175.

Appeal from a decision passed by Sujjad Alli Khan, Moonsiff of the Western Division, on the 29th June 1849.

Munnec Lall, (Plaintiff,) Appellant,

versus

Jugroop Singh, Unmol Singh, Audit Singh, Gunesh Singh, Nirban Singh, Radha Singh, Bhyro Singh, Juttur Singh, Byjoo Singh, Namedharee Singh, Chutter Singh, Jeo Narain Singh, Achul Singh, Shambharee Singh, Chundoo Singh, Cheetoo Singh, Temun Singh, and Parusnath, (Defendants,) Respondents.

Balmakoond and Purmanund, third parties.

THE appellant instituted this suit to obtain the value of the produce of certain fruit-bearing trees, said to be included in the limits of some lands named ayma Nuseerpoora, of which he holds a 6 annas share under leases from Cheetoo Singh and Nirban Singh, respondents.

Jugroop Singh, Audit Singh, Gunesli Singh, and Parusnath defendants, answered that plaintiff had no right by reason of the occupancy to collect the assets of the said lands; secondly, that the trees produced nothing in the year in question. Byjoo Singh and others of the defendants, besides the above pleas, urged a third, viz., that the jamun tree is not upon these lands but on those in the occupancy of the third parties. The suit was dismissed simply on the proof of the first plea afforded in the suit decreed in favor of the defendants, Jugroop Singh, Audit Singh, Gunesli Singh, and Parusnath, which decree has been this day reversed in appeal No. 180. The first plea thus falls to ground. With regard to the other two pleas, the second is unsupported by any evidence, and the estimated produce is proved by the witnesses and accounts brought forward by the appellant in the lower court. With respect to the jamun tree, its situation does not appear to me to have been defined by the plaintiff, so that it is impossible to make a decision as to whether the produce is enjoyed by the plaintiff or by the objecting parties. Deducting therefore the sum claimed on this account, viz., rupees 1-1-9, and reversing the decision of the moonsiff, I pass a decree for the remainder of the claim, viz., rupees 56-13-5, with interest to this date, amounting to rupees 16-6-3, total 70-3-8, with further interest to date of payment, and with costs in both courts, with interest thereon payable by the respondents.

THE 14TH MAY 1850.

No. 176.

Appeal from a decision passed by Syud Sujjad Alli Khan, Moonsiff of the Western Division, on the 29th June 1849.

Munnee Lall, (Plaintiff,) Appellant,

versus

Jugroop Singh, (Defendant,) Respondent.

SUIT laid at 44 rupees, 14 annas, 11 pie, for arrears of rent of 1255 F.

The defendant answered that plaintiff was not in possession of the land of which he claimed rent, and referred to the suit by himself and others to annul a decree for rent, which has been this day disposed of in appeal No. 180, by the dismissal of the same. The moonsiff dismissed appellant's suit, on the grounds on which he had decreed respondent's suit. The matter of the answer not being established by any proof, appellant is entitled to a decree. The moonsiff's decision is therefore reversed, and the appeal and suit of appellant (plaintiff) decreed, with costs in both courts, and it is ordered that respondent pay to appellant the sum claimed, viz., rupees 44-14-11,

interest at 12 per cent., on the principal sum of the arrear, viz., rupees 10-11-6, altogether rupees 55-10-5, with further interest from this date to the date of payment, besides costs of both courts, with interest to the same date.

THE 14TH MAY 1850.

No. 177.

Appeal from a decision passed by Syud Sujjad Alli Khan, Moonsiff of the Western Division, on the 29th June 1849.

Munnee Lall, (Plaintiff,) Appellant,

versus

Boodhun, (Defendant,) Respondent.

THE grounds of this appeal are similar to those in the preceding number. The defendant, however, besides denying the right of Munnee Lall to collect the rent of the lands, denied his own cultivation of them. The moonsiff dismissed the suit for reasons which have been pronounced insufficient in the appeal No 180, this day decided, and the evidence exhibited in the lower court establishes the fact of the rent claimed being due from the defendant. I therefore reverse the moonsiff's decision, and decree the claim, viz., rupees 7-1-4, with interest on the principal to the present date, viz., 1-8-9, altogether rupees 8-10-1, besides further interest on the whole to the date of payment, and the costs, with interest thereon to the same date.

THE 14TH MAY 1850.

No. 178.

Appeal from a decision passed by Syud Sujjad Alli Khan, Moonsiff of the Western Division, on the 29th June 1849.

Munnee Lall, (Plaintiff,) Appellant,

versus

Byjoo Singh and others, (Defendants,) Respondents.

APPELLANT instituted this suit for the recovery of arrears of rent of 1255 F., of the same share of lands as he claimed in the preceding suits, No. 177, &c., this day decided in appeal. The answer, however, of defendants was simply this, that they held no lands in cultivation belonging to the estate in question, and that the plaintiff instituted this suit merely to annoy them, because, being cited by him to witness on his side, they had stated what was favorable to the opposite side in the suit appealed at No. 175.

The moonsiff dismissed this suit for the same reasons as the others, although plaintiff had adduced the evidence of Durgae Lall putwaree and Udheen Singh, both his servants, who declared that defendants cultivated the lands and supported plaintiff's statement as to the amount of the rent. Respondents have caused two witnesses to be examined in this court, who declared that they (respondents) did not cultivate any land, and were subjected to the annoyance of this suit for the reasons stated by them in their answer.

I do not consider this evidence to be believed, and considering the claim made out, I therefore decree the appeal. It is therefore ordered, that the suit be decreed, and respondents pay to appellants the sum of rupees 6-12, with interest at 12 per cent. on the principal sum due to this date, amounting to rupees 1-7-6, altogether rupees 8-3-6, with further interest on the whole to the date of payment, besides costs in both courts, with interest on the same.

THE 14TH MAY 1850.

No. 179.

Appeal from a decision passed by Syud Sujjad Alli Khan, Moonsiff of the Western Division, 29th June 1849.

Munnee Lall, (Plaintiff,) Appellant,

versus

Beharce Muhto, (Defendant,) Respondent.

THIS suit is similar to the other appealed in the preceding numbers. The defendant, besides denying the right of the plaintiff to collect the rent of the lands, denies that he is a cultivator of any part of them, saying that Goordyal Kuhar cultivates 1 beegah 14 cottahs at 2 rupees, paying the rent to Parusnath. The moonsiff dismissed the suit for the reasons mentioned in the other appeals. The evidence of Durgae and Udheen Singh, the farm servants of plaintiff, proves that defendant cultivated 5 beegahs, the estimated produce of which, according to an account rendered by Durgae Lall, who is putwaree, amounted to rupees 15-2-4.

The respondent did not reply to the appeal.

The reasons for which the moonsiff dismissed the suit being insufficient, and the claim being proved by the evidence on the part of the plaintiff, the decision of the moonsiff is reversed, and the suit decreed, viz., for rupees 15-2-4, and interest, amounting to 3-9 to the present date, altogether rupees 18-11-4, with further interest on the whole to the day of payment, and costs, with interest on the same in both courts.

THE 14TH MAY 1850.

No. 180.

*Appeal from a decision passed by the Moonsiff of the Western Division,
Syud Sujjad Alli Khan, on the 29th June 1849.*

Munnee Lall, (Defendant,) Appellant,

versus

Jugroop Singh and others, (Plaintiffs,) Respondents.

SUIT to annul a decree passed in the same jurisdiction on the 3rd February 1847, in favor of defendant, as being collusive and operating to the injury of plaintiff's rights, laid at rupees 3-4-3.

In the suit in which the decree in question was passed, the plaintiff, defendant in this case, claimed rent from Radee Gop and others, cultivators of lands, which he alleged were in his possession under a farming lease granted to him in 1253 F. by Chetoo Singh.

The plaintiffs in this suit allege that they were in possession of the lands under a lease of prior date, viz., of 1242 F., and that the defendant, having caused the Gops to give a collusive assent to his claim, obtained a decree with a view to establish his possession. The plaintiffs therefore sued to have the decree cancelled under Construction No. 744. The first point then for plaintiffs to establish is that of their possession; the second that the suit was collusive on the part of the defendants in that suit as well as of the plaintiffs; and thirdly, that the moonsiff could consistently with the regulations and rules of practice cancel his own decree, all which the defendant denied. The substance of the grounds of the moonsiff's decision is this. It appears from the proceeding of the deputy collector engaged in making a settlement of this mehal, that Chetoo Singh had granted a lease (kutkeena) to certain parties among whom are the plaintiffs, and from a decision of the revenue court, that when Shahid Hossein sued for rent as Munnee Lall now does, and the present plaintiffs with Nirban Singh opposed his claim, on the ground that they held the property of Chetoo Singh, under a kutkeena of prior date, the deputy collector struck the suit off the file and referred Shahid Hossein to a suit in the civil court to establish his right. The papers of the case also show that the mortgage of this kutkeena has not been paid off. Munnee Lall defendant's lease is therefore a fit subject of investigation in the civil court, and the collusion of the defendants to his suit, who are his dependants, is improper, and a decree based on such collusion cannot be enforced and ought to be annulled.

In answer, the respondents contend that as Chetoo Singh was not in possession at the time he is said to have granted the lease in 1253, that lease, if genuine, is void, and that the Gops, who are the dependants of the appellant, have no concern in the lands, and it is therefore evident that their confession of judgment was collusive, and appellant's claim futile.

They caused three witnesses to be examined in this court, who declare that they are cultivators in occupancy of portions of the lands included in the lease pleaded by appellants; that they pay rent to Parusnath, respondent, and not to appellants, and that the Gops, defendants, against whom the decree in debate was passed, are not cultivators, but as they hear, debtors of appellant. Respondents have not exhibited their alleged lease of 13th Pooos 1242. That document was exhibited on the trial of the suit already mentioned as decided, on the 23rd September 1847, in favor of appellant, by one Girdharee Lall, who opposed his claim as a third party. He was not among the parties in whose favor that lease was granted, and Nirban Singh, already mentioned, explained the reason of its being in his hands. It was agreed, he says, that the document, after having been used in the office of the collector, should be given up to this man. By the plaint it appears he was a Lala, or Kaith, in the service of Chetoo Singh; and it is said in the plaint that Chetoo Singh, having required possession of half the lands leased in 1242, under agreement with the lessees, gave one-fourth of it to this Girdharee Lall in remuneration for his services, yet he is not among the plaintiffs in this case.

On the side of appellants, Radha Singh, son of Nirban Singh, already mentioned, gave evidence that he, as well as Jugroop Singh, Adit Singh, and Gunesh Singh, respondents, for whom he affixed their names, witnessed the deed of lease executed in favor of appellant by Chetoo Singh, in 1253 F., and wrote an endorsement on the back of the deed of lease of 1235 F. (which document was put in by appellant in the lower court) by desire of his father, Nirban Singh, and the above named respondents, who were the lessees or heirs of the lessees, in acknowledgment of the receipt of the advance of rupees 350, and that the said deed of lease, so endorsed, was in his presence surrendered to the new lessee, the appellant.

The whole of respondents' case rests on the evidence of the three witnesses for the collector's suit, and the settlement mentioned in the moonsiff's decree were both prior to the alleged lease of 1253, and they cannot prove the existence of respondents' rights up to this time. The evidence of their witnesses only goes to prove the possession of Parusnath, whose right is limited according to the plaint to a three annas share, out of eight annas, and the fact of the Gops having no lands in their cultivation. Evidence of witnesses unsupported by other evidence is at all times to be received with caution. In this case their statements are of that character, which at once gives rise to a suspicion that they have learned a lesson. They state a great number of facts, all that respondents are required to prove, but every thing in addition to what has been given above as the sum of their evidence turns out on cross-examination to be hearsay. In short I have great doubts whether they even are, what they allege themselves to be, cultivators. If they were in the habit

of paying rent to Parusnath as cultivators, surely this fact might have been proved by the papers of a putwaree and by receipts. If, moreover, respondents had been in possession of half the estate, surely more evidence, documentary as well as that of witnesses, might have been exhibited besides the statements of three cultivators of small portions of land. Moreover the circumstance of appellant having got a decree before the institution of this suit against Chetoo Singh, himself as a cultivator of another portion of the same lands, in a suit fully contested, is an argument strongly in favor of the right of the appellant founded on possession and of the *bonâ fide* nature of his claim in this case too.

Not being satisfied with the evidence adduced by respondents, I consider that the decree of the moonsiff was passed on insufficient grounds. I therefore decree the appeal, with all costs in both courts, along with interest to date of satisfaction, payable by respondents to appellant, and, reversing the decision of the moonsiff, dismiss the suit of the plaintiffs.

THE 14TH MAY 1850.

No. 181.

*Appeal from a decision passed by the Moonsiff of the Western Division,
Syud Sujjad Alli Khan, on the 29th June 1849.*

Munnee Lall, (Defendant,) Appellant,

versus

Jugroop Singh and others, (Plaintiffs,) Respondents.

SUIT to annul a decree passed on the same date, viz., 3rd February 1847, as that sought to be annulled in the suit appealed in No. 180, just decided, in favor also of the defendant against Dhoo-paree Pasban, Tirbhooon, Chundoo Singh, and Nemdharee Singh, suit laid at rupees 2-6-3.

In this case the grounds of suit and defence are the same as in the preceding case, but no witnesses were heard or proof of other kind put in on the side of respondents, further than those which are noticed in that case. The defendants, who are said to be in collusion with appellant in the suit, the decision of which is in question in this suit, are not named by the witnesses examined in the other cause. There is therefore less proof in this case even than in the other. I therefore reverse the moonsiff's decision, and decree this appeal, with all costs in both courts, together with interest payable up to date of satisfaction by respondents to appellants. The suit of the plaintiffs is dismissed.

THE 14TH MAY 1850.

No. 182.

Appeal from a decision of Syud Sujjad Alli Khan, Moonsiff of the Western Division, on the 29th June 1849.

Munnee Lall, (Plaintiff,) Appellant,

versus

Audit Singh, Bhyro Singh, and Jutta Singh, (Defendants,) Respondents.

SUIT for the rent of land, laid at rupees 41-8-3, on the same grounds as in the suits appealed in Nos. 175 to 179. The pleas of the defendant are the same as in No. 176, viz., that plaintiff had no right to collect rent on these lands. The moonsiff dismissed the suit, on the ground of the proof of that plea, as set forth in his decision, which was this day reversed in appeal No. 180. His decision is therefore reversed, and a decree is passed in favor of the appellant for the amount claimed, viz., rupees 41-8-3, and interest, amounting to 10-12, to this date, total rupees 52-4-3, with further interest on this sum to the date of payment, besides costs in both courts, with interest thereon, payable by respondents.

THE 14TH MAY 1850.

No. 185.

Appeal from a decision passed by Syud Sujjad Alli, Moonsiff of the Western Division, on the 29th June 1849.

Munnee Lall, (Plaintiff,) Appellant,

versus

Gunesh Singh, (Defendant,) Respondent.

THE pleas and reasons of the decision are the same in this case as in the preceding. Reversing the decision therefore, I pass a decree for the amount claimed, rupees 42-15-8, with interest to this date, amounting to rupees 10-7, total 56-6-8, with further interest on this sum to date of payment, besides costs in both courts, with interest thereon payable by the respondent to the appellant.

THE 14TH MAY 1850.

No. 184.

Appeal from a decision of Syud Sujjad Alli Khan, Moonsiff of the Western Division, on the 29th June 1849.

Munnee Lall, (Plaintiff,) Appellant,

versus

Jugroop Singh, (Defendant,) Respondent.

THIS is a suit by the same party against the same as in appeal No. 176, the claim being for rent of the same land, on account of a

different year, viz. 1254. For the same reasons as in that case, the decision is reversed, and decree is passed for the sum claimed, viz., rupees 27-4, with interest amounting to this day to rupees 7-4-6, total rupees 34-8-6, with further interest on this sum to the date of payment, and costs in both courts, with interest thereon, payable by respondent.

THE 14TH MAY 1850.

No. 185.

Appeal from a decision passed by Syud Sujjad Alli Khan, Moonsiff of the Western Division, on the 29th June 1849.

Munnee Lall, (Plaintiff,) Appellant,

versus

Guncsh Singh, (Defendant,) Respondent.

SUIT between the same parties as in No. 183, dismissed on the same grounds, the pleas being similar. Therefore, it is ordered, that the moonsiff's decision be reversed, and a decree be passed for the sum claimed, viz., rupees 28-2, with interest rupees 9-3, total 37-5, with further interest on this sum to date of payment, and costs of both courts, with interest thereon, payable by respondent.

THE 14TH MAY 1850.

No. 186.

Appeal from a decision passed by Syud Sujjad Alli Khan, Moonsiff of the Western Division, on the 29th June 1849.

Munnee Lall, (Plaintiff,) Appellant,

versus

Adit Singh, (Defendant,) Respondent.

THE grounds of action are similar, the parties the same as in No. 182, and the grounds of dismissal of the suit are the same. It is therefore ordered, for the same reasons, that the moonsiff's decision in this case be reversed, and a decree be passed for the amount claimed, viz., rupees 26-7-2, with interest amounting, to this date, to rupees 9-2-6, total 35-9-6, with further interest to date of payment, and costs in both courts, with interest thereon, payable by respondent.

THE 15TH MAY 1850.

No. 187.

Appeal from a decision passed by Syud Sujjad Alli Khan, Moonsiff of the Western Division, on the 29th June 1849.

Munnee Lall and Gokool Chund, (Plaintiffs,) Appellants,

versus

Nirban Singh, Jugroop Singh, Gunesh Singh, Adit Singh, and Chetoo Singh, (Defendants,) Respondents.

IN this case appellants claimed the amount of a tumusook executed in favor of their father, Dhurum Singh, for the amount of a tunkhwah for rents of 1242 and 1243 F., which the defendant Chetoo Singh granted, and the other defendants accepted, by those defendants. They stated that the said defendants, being unable to take up the tunkhwah by payment of the amount, gave their bond for it, and received the tunkhwah, and that they had paid only the sum of rupees 53. The amount of the tunkhwah for each year was rupees 48, or Sicca rupees 96, for the two years, for which sum the bond was executed on the 11th Poos 1245 F.

The answer of Gunesh Singh and Adit Singh, in the purport of which Jugroop Singh appears to have subsequently concurred by a petition presented by him for all three, was this. They never executed any such bond: Chetoo Singh being only entitled to receive rupees 21 annually of the rents, according to the lease of his rights which he had granted on 13th Poos 1242, they could not have accepted his draft (tunkhwah) on them for rupees 48. The suit is instigated by Munnee Lall, with a view of establishing his right under the pretended lease of Chetoo Singh, in his favor, bearing date in 1253 F., which lease is void in view of theirs of a prior date. The appellants adduced evidence to the execution of the tumusook, but the moonsiff, deeming the existence of the lease of the 13th Poos 1242 proved by the settlement roobakaree, and the summary decision of the collector, dismissing the suit of Shahid Hosein against Chetoo Singh referred to in his decision in case No. 355, reversed in appeal No. 180, yesterday, dismissed this claim.

The abovementioned settlement and summary decision, it appears, were deemed in that appeal no proof of the existence of this lease of 1242. The defendants did not produce the deed of lease, much less did they bring forward any proof besides those noticed above to establish its existence. On the other hand, the execution of the bond is established by the evidence of the bond and of two of the witnesses, whose names are subscribed in the margin of it, and the appellants' claim is clearly made out.

against Jugroop Singh, Gunesh Singh, Adit Singh, and Nirban Singh, respondents. Nirban Singh, who did not answer on the trial of the case in the lower court, pleads here that he is ready to pay his fourth share; but this is inadmissible, as there is no condition in the bond specifying a limited responsibility in respect to any of those who joined in executing it. Chetoo Singh, however, having admitted the truth of plaintiffs' statement in regard to the tunkhwahs, is clearly not liable either for the claim or any of the costs of the suit. On these grounds, I decree this appeal, and, reversing the decision of the moonsiff, decree the payment to appellants from Nirban Singh, Jugroop Singh, Gunesh Singh, and Adit Singh, respondents, of the amount claimed, viz., Company's rupees 148-4-3, with interest to this date, amounting to rupees 23-7-5, total rupees 171-11-8, with further interest on the above total sum, to the date of payment, besides costs in both courts, and interest thereon also to the day of payment. Chetoo Singh will receive his costs in the lower court from the appellants, with interest to the day of payment.

THE 15TH MAY 1850.

No. 102.

Appeal from a decision passed by Syud Sijjad Alli Khan, Moonsiff of the Western Division, on the 19th April 1849.

Ram Tahul Singh, (Defendant,) Appellant,

versus

Mohun Lall, (Plaintiff,) Respondent.

RESPONDENT instituted this suit to obtain arrears of rents of mouzah Hurreeharpore Tingurela, on account of 1245, 1246, and 1247 F., due on land in the cultivation of appellant; laying his claim at rupees 62-15-1, and the moonsiff decreed it without enquiry into the pleas of the appellant, on the ground that his answer could not be received conformably to Construction No. 375, and the precedent of a decision in the principal sudder ameen's court of the 10th January 1849, because it had been filed after plaintiff's proofs had been given into court, and not only had defendant not exhibited proof of the reason assigned by him for not having answered in time, viz., his absence from his home at the time the notice was taken there, but it had been proved that he actually received the notice, and acknowledged the receipt of it then and there.

In appeal, it is contended that his signature on the notice not being in his handwriting is a forgery; secondly, that the witnesses of plaintiff not having been all examined at the date of the filing of his answer, it was competent to defendant to file his answer then, and moreover it was received, and a reply to it taken by the moonsiff from the

plaintiff, and therefore it was incumbent on the moonsiff to enquire into the particulars stated in his answer before deciding the case.

It is true that the receipt of the notice is not signed in the handwriting of the appellant, but neither are the two instruments by which he empowered his vakeels in the lower court so signed by him, by which it appears that he could not sign his own name. His plea, that his answer was filed before the completion of the depositions of plaintiff's witnesses appears on reference to the dates upon those depositions, to be false. It appears, however, that the moonsiff not only called on the vakeels of the defendant, after the completion of the proofs of the plaintiff, to file an answer to the plaint within two days, which they did, but, receiving it without question, called on the plaintiff to reply to it. This, though not a reason for the investigation of the pleas in the answer, is a reason and a strong one for deeming the proceedings of the moonsiff irregular, and the decision faulty. The proper order on the answer of the defendant filed on the 20th November, if it stated any sufficient cause which put it out of defendant's power to answer before, was that he ought to exhibit proof of such cause by a certain day, when it would be determined whether the remainder of the pleas, in his answer, could legally be enquired into or not. The moonsiff, by his order calling on the plaintiff to reply to the answer, caused the defendant to suppose that there was no necessity for him to exhibit proof of the cause of delay, and then determined that the answer could not be considered, because he had failed to exhibit such proof. The appeal is decreed, and the case remanded to the moonsiff's court, to be tried again after the moonsiff shall have passed a proper order on the answer of defendants, considering it in the light of an application for permission to plead on special grounds though the period allowed by law had elapsed. The value of the stamp used in the petition of appeal will be refunded, and the moonsiff will pass such orders as may appear just and proper in regard to the other expenses of this appeal, when deciding the case

ZILLAH RAJSHAHYE.

PRESENT: G. C. CHEAP, ESQ., JUDGE.

THE 9TH MAY 1850.

No. 32 of 1847.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 29th November 1847.

Mahomed Roostum, for himself and as guardian of Mahomed Nussil, a minor, (Defendant,) Appellant,

versus

Rooder Chunder Moitree, after his death, Brindabullee Dibe, his wife, (Plaintiff,) Respondent.

Frasut-ool-nessa, Refat-ool-nessa, Pakiz-ool-nessa, Meher-ool-nessa, Munib-ool-nessa, and Arman Khatoon, widow of Mahomed Rufeek, Objectors.

THIS was a suit to recover possession of one and a half anna share of *hismut* Seernce-bashdea, mortgaged to the plaintiff Roodur Chunder Moitree, under a *kut-kubala*, or deed of conditional sale, dated 17th Assar 1250 B. S., and which, after notice of foreclosure, had become absolute. The suit was laid at 1000 rupees, the selling price of the land, and 100 rupees for *mesne* profits, total 1100 rupees, and the principal sudder ameen, holding the execution of the *kut* by the defendants, Mahomed Yaseen and Roostum, fully proved, and that they were entitled to a 1 *anna*, 6 *gundahs*, 2 *cowrees*, 2 *krants* share in the *hismut*, decreed that share in favor of the plaintiff, (reserving the share of Pheloo Mea *alias* Mahomed Attur, another of the brothers, and who had not joined in the mortgage,) he also declared the plaintiff entitled to *mesne* profits for the period he had been kept out of possession.

Against this decision the appellants appeal, deny having given the respondent any *kut*, or that they had any right in the property alleged to have been mortgaged, which had been made over by Mahomed Rufeek, their father, by a deed of *hibba-bil-ewuz*, to their mother, Arman Khatoon, and who was seised thereof. They further averred that there were three brothers and six daughters of Mahomed Rufeek, whose claims the principal sudder ameen had entirely overlooked.

It would appear that the names of Mahomed Rufeek and Shufee were registered as joint proprietors of a four *anna* share in the Rajshahye collectorate on the 8th August 1821 A. D., of the *kismut* in question. No trace appears after of the name of Arman Khatoon. The claim set up by her, under the deed of *hibba-bil-ewuz*, was not so till after the expiration of the eight days' notice for the hearing of the suit, her petition having been filed on the 31st July 1847. But no deed was then filed, or any proof of the deed offered or tendered. This makes the claim set up, under the alleged deed, very suspicious, and at any rate cannot avail the appellant Roostum, or the heirs of Yaseen deceased, who, there can be no doubt, executed the *kut-kubala*, as fully proved by the evidence, and who, having under it mortgaged their rights and failed to redeem the mortgage, must now stand the consequences. The appeal is therefore dismissed, and the principal sudder ameen's decree affirmed, all costs being made chargeable to the present appellants.

THE 9TH MAY 1850.

No. 21 of 1848.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 19th August 1848.

Ramnath Lahoree and Kishennath Lahoree, (Defendant,) Respondents,

versus

Komul Kishen Ghose, (Plaintiff,) Respondent.

THE respondent sued to recover possession of 58 beegahs, 10 cot-tahs of *mal* or rent-paying land, together with a tank, in mouzah Soondurbarrea, in the *seisin* of the appellants, who would neither pay rent nor relinquish the land, and which they claimed as their *lakhiraj*. The usual reference was made to the collector, who reported there were only 4 beegahs registered as *burmuttur* in the mouzah, and 50 *dewuttur*; and the quinquennial papers, filed by the late zemindar in 1201 B. S., exhibited an entry to the effect that Byjenath Lahoree (ancestors of the appellants) was wrongfully in possession (*jubrain dukhul*) of 51 beegahs of rent-paying land. The respondent, or plaintiff, is a purchaser at an auction sale for arrears; and adverting to the above entry in the quinquennial papers, the principal sudder ameen decreed the claim, or possession.

Against this decision the appellants appeal, pleading, *inter alia*, that as they had produced *sunnuds* for 101 beegahs, the respondent, as zemindar, could not sue; and though all the land was not in Soondurbarrea, it formed a portion of the aggregate amount set forth in the *sunnuds*, and that the tank they had dug for the benefit of the

public. With reference to this last plea, and adverting to the decision of the Sudder in the case of Hurreenarain Doss *versus* Ramkishen Rae, (Decisions for 1847, page 447) the appeal was admitted. Having examined the two *sunnuds* filed, I have no hesitation in saying they are both gross and palpable forgeries, and this whether they were given in to the collector or not. They bear no mark or signature of any revenue officer, and the entry made by the *zemindar* in the quinquennial papers for 1201 B. S., refutes the idea of the *sunnuds* being recorded in 1208 B. S., as *lakhiraj sunnuds*, and since there is no trace of them, on record, in the collectorate registers, this court cannot recognize them as genuine. The tank, too, it would now seem, was dug by the late *zemindar*, and occupies *only one beegah*. Such being the case, I see no reason for disturbing the principal sudder ameen's decision, which is therefore affirmed, and the appeal dismissed with costs.

THE 15TH MAY 1850.

No. 12 of 1849.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 20th March 1849.

Shamasoondree Dibe, widow of Radhagobind Chowdhree, deceased, and mother and guardian of Dhurneedhur Chowdhree and Gopalchunder Chowdhree, minors, (Defendants,) Appellants,

versus

Uppurna Dibe, widow of Goorogobind Moitre, deceased, (Plaintiff,) Respondent.

THE respondent claimed Company's rupees 1558, 12 annas, under an instalment bond, given to one Anund Mohun Moitre, by the defendant, and the principal sudder ameen decreed the claim, though there was no endorsement making over the bond to the respondent and only a deposition taken before the deputy collector of Malda, in which Anund Mohun Moitre deposed that the bond had fallen to the respondent's share in a separation of personal property and assets among the shareholders of a joint undivided family. The appeal was admitted on the 16th January last, and the principal sudder ameen called upon to explain how, in the absence of the usual endorsement, and though a sudder ameen and moonsiff was stationed at Malda, he had examined the party to whom the bond had been given, by the deputy collector. The reply amounts to this—that Anund Mohun Moitre was the treasurer of the Malda collectorate, and officers were examined through the heads of offices. As this practice, if it prevails, is opposed to the practice of other courts; and where there is a civil court, judge's, sudder ameen's, or moonsiff's, it is unnecessary to send interrogatories to heads of offices to

examine their subordinates to facts connected with suits in which they are *personally* and not *officially* connected. The principal sudder ameen's decision is therefore reversed, and the case is sent back for him to summon and examine Anund Mohun Moittre, himself, or through the moonsiff of Malda, sending interrogatories and the bond. This point has not been questioned by the appellant, but as he *generally* denied the claim of the plaintiff, it was (to adopt the words* of the Sudder Court in the case of J. P. Wise *versus* Rajkishen Chuckerbuttee, Sudder Dewanny Adawlut Decisions for 1846, page 226) incumbent on the plaintiff to adduce proof of her claim, which rests entirely on the transfer of the bond to her, among the personalities falling to her share, on the division of the property among the shareholders. The value of the stamp to be returned, and the usual order as regard costs.

THE 18TH MAY 1850.

No. 26 of 1848.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 19th September 1848.

Shibnath Sandyal, after his death, Govindnath Sandyal, his son, Joysunker Sandyal, Tarnce Chunder Pakrasee, Ramlall Pakrasee, and Kishenlall Pakrasee, (Defendants,) Appellants,

versus

Purmanund Roy, Kaleesoondree Dasseah, widow of Haranund Roy, deceased, and mother of Hurish Chunder Roy, a minor, and Puddo Rekha Dasseah, widow of Radha Madhub Roy, deceased, (Plaintiffs,) Respondents.

THE respondents sued for possession of 289 *beegahs*, 10½ *cottahs* of *chur* land, which they alleged had been forcibly taken possession of by the appellants though it belonged to their *talook* Begra. The defendants claimed the land as belonging to their respective *talooks*, called Dooguleah and Kealee Sulkea, of which they had all along been seised and in undisturbed possession. The principal sudder ameen, with reference to a report of an *ameen* appointed by the uncovenanted deputy collector of Pubna, and a proceeding of the deputy collector, awarded possession to the plaintiffs, with *mesne* profits, *i. e.*, the plaintiffs to receive of the *zemindars* of Dooguleah, or the Pakrasees, Beegahs 77 Cottahs 18½

Ditto of Kealee Sulkea, or the Sandyls, „ 211 „ 10
with *mesne* profits for the *period* the plaintiffs had been kept out of possession.

* The plaintiff has not been nonsuited, as in the case cited, on a review of judgment, though the Sudder Court let the plaintiff offer proof of the transfer to him of the bond on which he sued, (Sudder Dewanny Adawlut Decisions for 1848, page 432.)

Adverting to the local enquiry made by the uncovenanted deputy collector of Pubna, and recorded at length in the deputy collector's proceeding of the 30th January 1846, there can be no doubt the land in dispute, which is *alluvion*, belonged to the respondents, and that the possession of the appellants was, to use the expression in Clauses 1 and 2, Section 3, Regulation II. 1805, "an unjust and dishonest acquisition;" and therefore, whether 12 years had or had not elapsed, it mattered not, as the suit was not barred by the law of limitation, and which is the chief ground of appeal. The respondent, Purmanund Roy, in a *solanamah*, dated the 24th Aughun 1241 B. S., and in a *nukshah* then drawn up, stated he had been *forcibly* dispossessed. I cannot however find any definite trace of *when* the dispossession, or ousting, took place. Purmanund Roy seems to have been the *serishtadar* of the deputy collector's office at Pubnah on the 30th January 1846, when the deputy collector held his proceeding of that date, recognizing his claim to the *alluvion* land; but referring him to the civil courts for redress. And it seems strange that, holding the situation he did, he should, for such a length of time, have remained silent as to the usurpation of his rights by the appellants, and which he never disputed till the uncovenanted deputy collector visited the spot on resumption duty. On these grounds, I think it inequitable to adjudge *mesne* profits *before* the local enquiry held, and reference made by the uncovenanted deputy collector to his superior, which was on the 31st March 1845. Therefore, in amendment of the principal sudder ameen's decree, let it be declared that the respondents are to have possession of the lands set forth in the principal sudder ameen's decree, with *mesne* profits from the 31st March 1845 A. D., and the parties will pay their own costs in this appeal. This was just one of the cases that a separate suit should have been brought for *mesne* profits, as one of the appellants, against whom the decree has been passed, had appropriated nearly three times the quantity of land his co-defendants had taken. And in carrying out the decree care should be taken that costs incurred, in giving possession and ascertaining the amount of *mesne* profits connected with the land to be given over from the appellants to the respondents, are not mixed up, that is, the amount of *mesne* profits against *each* individually and costs connected therewith, should be kept separate and distinct as possible.

THE 18TH MAY 1850.

No. 29 of 1848.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 22nd November 1848.

Kumul Munnee Dibeā, (Defendant,) Appellant,

versus

Kishen Chunder Roy, after his death, his son and heir, Jadubchunder Roy, Kirpamye Dibeā, widow of Hurkanth Roy, deceased, and Anund Chunder Roy, (Plaintiffs,) Respondents.

KISHEN CHUNDER ROY, deceased, ancestor of the respondent Jadubchunder, Kirpamye Dibeā, widow of Hurkanth Roy, and Anund Chunder Roy, instituted this suit to recover possession of a 3 *anna* share of *turuf* Kakole and other *mouzahs*, alleged to have been sold to them under a deed of sale, dated the 16th Assin 1252 B. S., by the appellant, the wife of Cashee Kumul Takoor; and the principal sudder ameen, holding the sale fully established, gave the respondents, as heirs of the purchaser, a decree. Appellant, as the alleged seller, appealed against this decision—denied *in toto* the sale, and that it was a collusive one, originating in the intrigues of her rival, or the younger wife of Cashee Kumul Takoor, her husband; the sale being in the name of Hurkanth Roy, deceased, the brother of Kishen Chunder, and her cousin, and who got her husband to give an *ikrar*, or indenture, to the effect that he consented to the sale. Her seal (appellant's) was also, with the former deed of sale, in the custody of her husband. It being quite clear the purchaser did not get possession before his death, and that the property had been previously mortgaged, the appeal was admitted on the 5th December last, and the party to whom it had been mortgaged, and also the appellant's husband, were summoned, to be examined if they had consented to the sale, and to ascertain what had become of the proceeds of the sale. Neither of these individuals have appeared, and as the only reason specified in the deed of sale for its being made is, that the seller could not pay the rents, I am not satisfied that it was a *bonâ fide* sale, made by the appellant, though it might have been so by the appellant's husband, and who, after selling her the property, seems to have colluded with his younger wife's relatives and tried to make it over to them. The appeal is therefore decreed, and the sale to Hurkanth Roy declared invalid. Appellant's costs will be paid by the heirs of the parties who made the purchase, and who will also pay their own costs.

ZILLAH RUNGPORE.

PRESENT: T. WYATT, ESQ., JUDGE.

THE 15TH MAY 1850.

No. 15 of 1848.

Appeal from the decision of the Principal Sudder Ameen of the 21st July 1848.

Tukher Mahomed Sirkar, (Defendant, with others,) Appellants,

versus

Putteram, (Plaintiff,) Respondent.

THIS suit was instituted by the respondent as a ryot for the recovery of 16 beegahs of alluvion of the jheel of Bammunee, attached to the estate of Baharbund, the rent of which he paid to the zumeendar, of which he had been dispossessed by the appellant on the plea of its being the rent-free tenure (dewutter) of Sirkar Thakoor, the rent of which he paid to the said Thakoor. As the plaintiff ought to have included the rent-free holder of the disputed land as one of the defendants, the appeal is decreed, with costs, and the order of the lower court reversed; the original plaint being nonsuited.

THE 16TH MAY 1850.

No. 17 of 1848.

Appeal from the decision of the Principal Sudder Ameen, of the 20th August 1846.

Seetul Chunder, Suroop Chunder, Nubbo Kishore Hissabea, and Musst. Chittromonee Dossea, Appellants, (Defendants,)

versus

Messrs. Busch and Bonnevie, farmers of Purubbhag, (Plaintiffs,) Respondents.

THIS suit was instituted by the respondents for arrears of rent of 1249 to 1252 B. S., amounting with interest to rupees 1,409-12-8, due from the appellants, account of jotes Kissenhuree, Sonaram, and

Sreckisshon, situated in kismut Prankishen, in the estate of Purub-bhag, which was decreed by Opinder Chunder Nyarutten, principal sudder ameen, in their favor, with costs, on the 20th August 1846, founded on a decree previously passed by the sudder ameen on the 6th December 1845, for rupees 311-0-2 pie, as the jumma fixed on two of the three jotes above stated, viz., Kissenhuree and Sonaram, which decision, on appeal, was reversed by the present principal sudder ameen, Syud Ahmud Buksh, on the 3rd April 1847, who considered these jotes to be mokurrurec.

The principal sudder ameen having* applied for a review of the judgment of the former principal sudder ameen of the 20th August 1846, above cited, it was refused on the 9th June 1847.

The appellants then appealed to the Sudder Dewanny Adawlut, who, under date the 11th September 1848, stated they could not interfere, directing the appellants to appeal, if they had any ground for doing so.

Considering that a review of judgment of the principal sudder ameen's decision of the 20th August 1846 had already been disallowed by me, and that the appellants have adduced no sufficient reason for not having timely appealed from the said decision of the 20th August 1846, and had wilfully omitted to do so merely to save themselves the expense of appeal, while their appeal was pending in the judge's court from the decision of the sudder ameen of the 6th December 1845, they must pay the penalty of their default by discharging the decree of the 20th August 1846, whenever execution may be taken out.

To admit the present appeal after a lapse of two years and two months and upwards, on the insufficient ground alleged by the appellants, would be to sanction an improper precedent, of which parties cast in suits would be but too ready to avail themselves. I therefore reject the appeal, and confirm the order of the lower court of the 20th August 1846.

THE 17TH MAY 1850.

No. 2 of 1849.

Appeal from the decision of the Principal Sudder Ameen, of the 6th January 1849.

Raje Mahomed, (Defendant, with two others,) Appellants,

versus

Musst. Puteema Bewa, Pauper, (Plaintiff,) Respondent.

THIS suit was remanded for trial on the 8th December 1847, as contained in page 46 of the Decisions of the zillah court for December 1847.

The lower court took further evidence on the part of the plaintiff, as directed, and decreed the case again, against all the defendants, for rupees 415, from which decision this appeal has been preferred by Raje Mahomed, one of the defendants, who maintains that the plaintiff pawned her jewels to him for rupees 60, and adduces evidence in support of that assertion, which the lower court discredits, and which I equally discredit, contrasting it with all the proofs adduced by the plaintiff of her having been defrauded, during her absence from home, by two of the other defendants in the case (father and son) of all her property entrusted to their care: her jewels, estimated to be worth rupees 125, having been found in the possession of the appellant.

I do not think, however, that the appellant is liable to the payment of a larger portion of the decree than the value of the jewels, or rupees 125, with costs and interest equivalent to this decree. I therefore decree the appeal, modifying the decision of the lower court as above stated. The appellant will obtain from the respondent the costs of appealing to this court.

THE 21ST MAY 1850.

No. 5 of 1849.

Appeal from the decision of the Principal Sudder Ameen, of the 27th February 1849.

Bydenath Singh Roy, Zemindar, (Defendant,) Appellant,

versus

Mussamut Gungamoi Dossea and others, (Plaintiffs,) Respondents.

THIS was an action brought by the respondents for foreclosure of a mortgage and conditional sale of $5\frac{1}{2}$ annas of mouzali Bagdokra, under an instrument denominated kut-kubala, dated 1st Poos 1248 B. S., executed by the defendant in favor of Sumboo Chunder Muzmoadar, ancestor of the plaintiffs, in consideration of a loan of rupees 5,500, which was agreed to be repaid with interest at once, on 30th Chyite 1252 B. S.

The kut-kubala was registered. The defendant admitted the kut-kubala, but stated that he had not only given, under date the 6th Poos 1248, his estate in farm to Sumboo Chunder in the fictitious name of Bissesshur Koond, whose kubooleut he had, until he had repaid himself the loan, receiving in return from him an ikrar-namah, engaging to restore the estate to him when the debt was fully discharged, but that he had subsequently paid a part of this

loan, viz., rupees 4000, to Sumboo Chunder, and had obtained his receipt for the same, bearing date the 11th Assar 1250, attested by six witnesses, and who, from the profits of his estate, had repaid himself the remainder of the debt.

The lower court decreed the case, the defendant's alleged ikrarnamah being burnt, and which he had previously failed to register, and only two of six subscribing witnesses to Sumboo Chunder's receipt for rupees 4000 having been able to depose in favor of its validity, it was not considered proved; and in respect to the benamee kubooleut produced, as it contained no reference to the kut-kubala it was of no avail to the defendant.

Concurring with the lower court in its grounds for decreeing the case, I reject the appeal, and affirm the judgment appealed against.

THE 27TH MAY 1850.

No. 6 of 1849.

Appeal from the decision of the Principal Sudder Ameen of the 27th March 1849.

Prosunno Comar Tagore, (Plaintiff,) Appellant,

versus

Ranee Kisto Rummonee, Kowur Shamkisshore Roy, and others,
(Defendants,) Respondents.

THE particulars of this suit are set forth in the decisions of this court of the 12th July 1848, recorded in the Zillah Decisions of July 1848, the parties being Ranee Kisto Rummonee and Kowur Shamkisshore Roy, (defendants) appellants, *versus* Prosunno Comar Tagore (plaintiff,) respondent.

The case was remanded to the principal sudder ameen for trial on the 12th July 1848, and was again tried and decided by him on the 27th March, the case being dismissed, from which decision this appeal has been preferred.

The lower court seems to have founded its decision entirely on the report of the collector of the 19th March 1849, (to whom, under Construction No. 981, the case was rightly referrible, in the first instance,) who gives it as his opinion that the disputed land is rent-free (dewutter) situated in Ambarea Tamlipara, belonging to the defendants, Ranee Kisto Rummonee and others; but, as that report was of a summary nature, it ought not to have been solely relied on for determining a disputed proprietary right, but the lower court ought to have directed a local enquiry to be made and evidence to be taken on the spot on the part of both plaintiff and defendants, in order to

ascertain if the lands were situated in the village of Moheepore belonging to the plaintiff, or were rent-free comprised in the village of Ambarea Tamlipara, the property of the defendants.

For the above reasons, considering the decision of the lower court to have been based on imperfect data, I decree the appeal, reversing the order of the lower court, to which the case will be returned for investigation and decision with reference to the remarks above stated.

The value of the stamp of appeal will, as usual, be returned to the appellant.

ZILLAH SARUN.

PRESENT: H. V. HATHORN, Esq., JUDGE.

THE 13TH MAY 1850.

No. 23 of 1847.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 17th May 1847.

Ramrooch Pandey, (Defendant,) Appellant,

versus

Bunwari Lal, (Plaintiff,) Respondent.

CLAIM, to recover Company's rupees 1446, on account of a deed of lease on advance dated 2nd Assar 1250 Fussily, (14th June 1843,) executed by Ramrooch Pandey in favor of Narain Dutt Saho, and sold by the latter on the 31st August 1844, in liquidation of debt due by the said Narain Dutt to plaintiff, a Chupra mahajun.

The terms of the lease between the proprietor Ramrooch and the farmer, Narain Dutt, stipulated that, for the consideration of Company's rupees 1200, lent to the proprietor, Narain Dutt was to hold possession of the malik's 4 anna share of the village Kotea, pergunnah Goah, paying the Government revenue (rupees 106, annas 10, pie 8,) and Company's rupees 45, annas 14, pie 10, as rent to the malik, and the balance rupees 126, was to be taken by the farmer as his "oojrut-i-tikae-intifa-zar-i-peshgee" (or farming compensation and profit on the advance.)

The lease was to hold good in the first instance from 1251 to 1253 Fussily, inclusive, but it was further agreed that, if at the end of 1253 Fussily, the principal, (*viz.*, Company's rupees 1200,) was not repaid at once, the lease was to continue with all its conditions until *at the end of any subsequent* (Fussily) *year* the advance might be liquidated.

Subsequently the farmer's rights and interests in this lease were transferred by a bill of sale to Bunwari Lal, in which bill the possession of Narain Dutt, the farmer, was distinctly acknowledged.

Under these circumstances, I do not understand upon what grounds the principal sudder ameen has passed a decree in favor of the mahajun Bunwari Lal against the malik for *immediate payment of the loan*, (advanced for an indefinite period,) contrary to the express terms of the lease itself.

When leases are given, as in this case, in consideration of an advance, nominally for a term of years, but with a condition to run on (if not paid at the expiration of the term originally specified) until the advance be refunded by the proprietor, the termination of the lease depends upon the voluntary payment of the advance, and neither has the proprietor the power intermediately to oust the farmer, nor has the farmer the right to enforce (at his pleasure) payment of the advance; the ejection of the farmer (or his substitute) by the proprietor, would alone justify the farmer or his "*locum tenens*" in demanding instantaneous payment; but such ejectment or dispossession on the part of the proprietor is not *proved*, and the mere transfer of the farmer's right to a third party cannot alter the terms of the original contract.

For the above reasons this appeal was admitted on the 23rd April. The respondent urges, in reply, that the deed of lease was executed in Assar 1250 Fussily, three months before the commencement of the lease, and that it is customary to enter into engagements in Jyte for the year following; but the prior execution of the lease cannot alter the specified period stated for the lease to commence and terminate; nor can the expiration of the usual period for making collections justify the institution of a suit, or create a cause of action *before* the term of the lease had expired. Upon these grounds therefore, independent of the lease containing an after-stipulation rendering it a lease for an indefinite period, this suit for immediate payment instituted before the lease had expired must be rejected.

ORDERED,

That this appeal be decreed, and the decision of the lower court be reversed, and the suit of respondent be nonsuited, with full costs.

THE 28TH MAY 1850!

No. 25 of 1847.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 21st June 1847.

Ramchurn Saho, (Plaintiff,) Appellant,

versus

Manikchund, (Defendant,) Respondent, and Musst. Rutton Koer,
(third party.)

CLAIM, for possession and registration of name as proprietor for the entire estate of Jugdeespoor and Ramapalee, pergunnah Baal, with wassilat, or mesne profits, total Company's rupees 3,358, 5 annas, 4 pies.

This suit was instituted on the 23rd August 1845. The issue of this case partly depends upon the issue of the appeal case No. 28, preceding. In that case, it has been held that the estate was

fictionally purchased by the father in the name of Manick Chund, (defendant,) the elder son, and therefore the claim of other sons by a second marriage for their shares in the estate founded upon an illegal transaction was not cognizable.

In the present suit the above point is not in issue, as the minor sons, through their guardian, Musst. Ruttona Koer, are not direct parties to this suit, and their separate claim to participate has been rejected.

The issue of *this* suit depends upon the validity or otherwise of the deed of mortgage and conditional sale, bearing date the 23rd May 1844, alleged to have been executed by Manikchund in favor of plaintiff. The deed is filed, and the transfer on the part of Manikchund (in whose name the property was purchased at auction) has been *admitted* by the said Manik Chund, in his answer to the suit of Musst. Ruttona Koer, although in this case he has allowed the claim to be disposed of *ex parte*. The terms of this mortgage stipulated payment of the money advanced, viz., Company's rupees 4,301, by the 20th Assar 1251 Fussily, failing which the sale was to become absolute. The preliminary proceedings under Regulation XVII. 1806 have been duly conformed to, and the amount has not been repaid, either within the period stipulated for payment or within the additional year of grace prescribed by law. The subsequent explanation of Manik Chund in his razeenamah (filed in the appeal case No. 26,) urging that he was at first induced to admit the mortgage in order to repel the claim of his younger brothers, is considered unworthy of notice. A party cannot be permitted to waver in his statement, or seek to benefit by his own wrong.

The decision of the principal sudder ameen, reducing the award to one-fourth of the estate, must be rectified.

ORDERED,

That this decision of the principal sudder ameen in this case be amended, and the claim of plaintiff to the *entire* estate of Jugdees-poor and Rampalee, pergunnah Baal, be decreed, with full costs payable by defendants, together with mesne profits from 1252 Fussily to date of possession in such amount as may be ascertained in execution of this decree.

THE 28TH MAY 1850.

No. 26 of 1847.

Manick Chund, (Defendant,) Appellant,

versus

Musst. Ruttona Koer, mother and guardian of Sheogobind and others, minor sons of Munbode Saho, deceased, (Plaintiff,) Respondent.

THIS separate appeal from the decision of the principal sudder ameen of Sarun, dated 21st June 1847, was filed on the 15th July

1847, but was offered to be withdrawn by appellant by a bazee-namah, dated 3rd November 1848: but in consequence of an objection taken by Ramchurn Saho, a co-defendant, it was not disposed of, pending the decision of the case in appeal.

ORDERED,

That this appeal be now struck off the file, and the costs be liquidated by appellant.

THE 28TH MAY 1850.

No. 28 of 1847.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 21st June 1847.

Ramchurn Saho, by precaution, (Defendant,) Appellant,

versus

Musst. Ruttona Koer, mother and guardian of Sheegobind Saho, Ramgobind Saho, and Gokulchund Saho, minor sons, (Plaintiffs,) Respondents.

CLAIM, for possession of a 12 anna share in the villages Jugdees-poor and Rampalee, pergunnah Baal, and registration of the names of the above named minor sons as proprietors, valuation Company's rupees 1500, being three times the Government rental.

This suit was instituted on the 14th August 1845. It appears that Munbode Saho had four sons; one son (Manik Chund*) by a first marriage, and three sons, (minors,) by a second marriage. On the 21st December 1837, the above two villages were put up for sale by the collector of Sarun, in one lot, for arrears of Government revenue, and purchased by Manik Chund for Company's rupees 9300, and (as he stated at the time) *for himself*. On the 14th June 1840, Munbode Saho died; and the certificate of heritage (or "warasutnameh") subsequently filed, noted that Munbode Saho had left four sons, who were entitled to succeed to his property in equal shares.

Subsequently Manik Chund is stated to have executed a "tum-leeknameh," or deed of assignment, dated 25th March 1841, assigning his one-fourth share of his father's heritable and his own acquired property to his three younger brothers in equal shares. There is however no reason given by plaintiff for such an unusual assignment, and Manik Chund himself denies the authenticity of this document.

It also appears that on the 6th July 1844, in a case in which the four sons conjointly had obtained a decree in the Sudder Dewanny Adawlut, dated 6th September 1842, against Musst. Baal Koer, "solanamehs" were filed by both parties, viz. by Manik Chund and his

* *Vide* the separate appeal of Manik Chund, (No. 26,) the principal defendant in this case.

brothers respectively, (the latter through their mother and guardian), stating that they had come to an amicable adjustment, and had agreed to participate conjointly (as formerly) in the entire real and personal property of their deceased father, Munbode Saho, and accordingly claimed the proceeds of the decree in equal shares.

Ramchurn Saho (the defendant by precaution in this case) is the mortgagee of the property in dispute; he claims possession of the entire villages (Jugdeespoor and Rampalee) by a deed of mortgage dated 23rd May 1844, executed by Manik Chund alone, for a consideration of Company's rupees 4301, which was to be repaid on the 20th Assar 1251 Fussily, or the sale to become absolute; due notice was issued on the 23rd August 1844, under the provisions of Regulation XVII. of 1806, but the money was not forthcoming. Ramchurn accordingly claims possession of the entire estate as his proprietary right; and the principal sudder ameen has given him a decree for *one-fourth* only, or Manik Chund's individual share. A separate suit and separate appeal (No. 25) is filed by Ramchurn, the mortgagee, *versus* Manik Chund, for the *entire* estate, upon a lapsed mortgage, which of course hinges upon this suit, instituted by the heirs by the second marriage, claiming their share (three-fourths) of Munbode's property.

Adverting to the above exposition of the case, the following appear to be the material points at issue in this case.

First. By whom were those villages purchased, viz., whether by Munbode Saho, the father, in the fictitious name of his eldest son, Manik Chund, or by Manik Chund, with his own means and on his own account?

Secondly. Is the purchase of an estate sold at auction for Government arrears by a father, surreptitiously in the name of his eldest son, a legal transaction; or is it subject to the rule affecting purchases in *fictitious* names?

Thirdly. If such purchase be legal, is plaintiff entitled to her three-fourth share as the mother and guardian of the three minor children by the second marriage? If illegal, what becomes of the property?

First. I entertain no doubt that these villages were surreptitiously purchased by Munbode Saho in the name of his eldest son, Manik Chund. In proof of this, we have the declared *acknowledgment* of both parties to that effect. Munbode Saho, on the 26th May 1840, petitioned this court through his agent, Bydnath Shokul, (in the preliminary investigation under Act IX. 1839, on the part of former maliks to sue *in formâ pauperis*,) to the effect that his client *Munbode Saho had bought the estate* himself and with his own money, *in the name of his son*, and that he, Munbode Saho, was in actual possession; and on the 30th December 1840, the same agent upon an attested dower of attorney executed conjointly by Manik Chund and Ruttona Koer (as mother and guardian) dated 21st July

1840, again petitioned this court (on behalf of his clients against the claim of certain "byedars,") stating that *Munbode Saho had bought the estate in the name of his son, Manik Chund*, and that all four sons were in possession, and not the "byedars" as asserted.

It is true that Manik Chund at the sale stated before the collector that he was purchasing on his own account, but this was evidently done to avoid an acknowledged infringement of the sale law; as sales in *fictitious* names under the law in force (Regulation XI. 1822,) were known to be illegal. We have also the concurring fact that the revenue was afterwards paid by Munbode's agent.

Secondly. I am of opinion that although purchases were very generally effected at that time in the name of sons or other near relatives, an auction purchase secretly made by a father in the name of his son must be considered illegal under the provisions of Regulation XI. 1822. The terms of the Section and Clause (C. 3, S. 13,) run thus:—"It shall be the duty of the collector, prior to knocking down the lot, to satisfy himself that the person or persons named is or are the real *bonâ fide* purchaser or purchasers." And a *penalty* is attached to the after discovery of a purchase made in a fictitious name.

Thirdly. Considering the sale, therefore, to have been illegal by reason of the father, Munbode Saho, having surreptitiously purchased at an auction sale in the name of his son, it follows that the claim of the heirs (plaintiffs) *founded upon an illegal transaction* is not cognizable. This point has been distinctly ruled in the cases noted in the margin.

Delaram and others,
versus
Roop Chund Saho, dated
18th April 1820,
and
Grees Chunder Rai and
others,
versus
Hurischunder Rai and
others, dated 28th De-
cember 1826.

The claim of plaintiff must therefore be dismissed; but with reference to the circumstances of the case, the illegality of the transaction having been fixed upon the father, *Munbode Saho*, the costs in this case should be paid by the parties respectively.

It is my duty to add that in this case, although the principal sudder ameen (Mahomed Rafiq) drew up a proceeding under Section 10, Regulation XXVI. 1814, it was not so full nor so regular as is enjoined by the law above cited. He simply called upon the plaintiff to substantiate the fact of Munbode Saho's individual purchase, and directed the defendant to be prepared to refute the same.

This is not sufficient. The precise "object of the action, the grounds on which it is maintained, and the point or points to be established by the parties respectively," should have been distinctly set forth, (*vide* C. O. No. 55, dated 13th October 1848,) but as this irregularity of procedure does not affect the merits of the case, and the plaintiff's suit is not considered cognizable, being founded upon an illegal transaction, I do not consider it necessary to cause

the delay and expense which would accrue, by remanding the case to the lower court for re-trial, (*vide* precedent, case No. 397 of 1848, dated 22nd April 1850, page 138, Decisions of the Sudder Dewanny Adawlut.)

ORDERED,

That this appeal be decreed, and the claim of plaintiff be dismissed, and the decision of the principal sudder ameen be reversed. Each party to pay their own costs.

THE 31ST MAY 1850.

No. 33 of 1849.

A Regular Appeal from a decision passed by Mahomed Wajid, late Moon-siff of Chumparun, dated 22nd January 1849.

Chatterdharry Singh, (Plaintiff,) Appellant,

versus

Luchmenath Ojha, (Defendant,) Respondent.

CLAIM for registration of name as proprietor of 2 annas 8 pie in tolah Kuleanpoor, mouzah Burhurwah, tuppa Doukata, pergunnah Mujhawa, comprising 32 beegahs 5 cottahs of land, estimated value Company's rupees 41, 2 annas, 6 pie.

This suit was instituted by plaintiff on the 28th January 1848. The claim is founded upon a bill of sale, dated 11th April 1843, by which 32 beegahs and 5 cottahs of land out of 64 beegahs 10 cottahs (or one-half) were transferred to plaintiff by sale for the sum of Company's rupees 290, 4 annas.

Defendant denies the execution of the deed, stating that his whole share (*viz.*, 64 beegahs 10 cottahs) was leased to plaintiff's nephew, Souloo Singh, for an advance of 201 rupees upon a seven years' lease, dated 1st Sawun 1248 Fussily, (4th June 1841,) and that this claim is false.

The moonsiff considers the execution of the deed of sale to be *doubtful*, and the non-payment and non-delivery of the property *certain*, and therefore dismissed the suit, with costs. The suit being no bar to the re-institution of another suit hereafter on completion of the purchase.

JUDGMENT.

This suit, in its present form, should not have been received by the moonsiff. The bill of sale makes no allusion to the sale of a *fractional portion* of the tolah. It simply transfers 32 beegahs 5 cottahs of land to plaintiff *without any specification of boundaries*. In the plaint, it is explained that the tolah consists of 192 beegahs 10 cottahs, settled with three persons conjointly, of which the half of defendants' portion (being an undivided share) was sold to plaintiff.

Plaintiff should therefore have computed the value of his claim upon the selling price (Company's rupees 290, 4 annas) which would raise the stamp to 16 rupees, and should moreover have defined the boundaries of the specific portion of land of which he claims to have his name recorded as the proprietor: not having done so, I am of opinion that (under the precedent, volume VII. page 19, Lal Purmeshwar Buksh Singh *versus* Raja Oodwunt Purkash Singh, dated 16th February 1840) the plaintiff must be nonsuited.

ORDERED,

That the decision of the moonsiff be cancelled, and the claim of appellant (plaintiff) be nonsuited, with costs.

THE 31ST MAY 1850.

No. 36 of 1849.

A Regular Appeal from a decision passed by Syed Mahomed Waheedooddeen, late Moonsiff of Sewan, dated 21st August 1849.

Hurrukdu Opadea, (Plaintiff,) Appellant,

versus

Buloton Rai, (Defendant,) Respondent.

CLAIM, Company's 63, 13 annas, 6 pie, on account of the value of crops cultivated on 6 beegahs of land in Rajmulpendaree, pergunnah Baal in 1255 Fussily.

This suit was transferred for trial to the moonsiff of Sewan, to equalize the files. Plaintiff was the former cultivator of the land against whom the malik Isreepurshad Opadea had instituted a separate suit for arrears of rent from 1248 to 1254 Fussily, amounting to Company's rupees 223, 4 annas, and which claim has been found to be not due. Plaintiff in this suit is the malik's cousin, who (without any allusion to the malik's suit) brings this action against the former cultivator, declaring that in 1255 Fussily he cultivated peas and gram upon the said 6 beegahs of land, and made over charge of the crops to defendant (the ousted ryot,) to enable him to go to another village on some private business, and that in his absence the crop was valued by the village officers, and afterwards cut and carried away by defendant, who had refused to restore the same, and being responsible to the malik for half of the crop, he, plaintiff, brings this action to recover the value of the whole from the defendant.

The defendant denies the allegation that plaintiff cultivated the said land, or that the crop was made over to him in charge, and challenges plaintiff to produce any documentary proof in support of his statement, observing that by his own showing he was only entitled to *half* the crop. That he, defendant, holds a lease for the 6 beegahs, obtained from the malik, Isreepurshad, at a rental of 18 rupees per

annum, and that the improbability of plaintiff's claim is patent upon the face thereof, as he, defendant, is not a "nigaban" by profession.

The moonsiff has dismissed this claim as void of proof and altogether improbable, and is of opinion that it has been instituted to support the malik's endeavour to dispossess the defendant (the former cultivator) with a view of enhancing the rent.

JUDGMENT.

I concur in the view taken of this case by the late moonsiff of Sewan. The fact of cultivation by the plaintiff in 1255 Fussily, and making over the crops as alleged (which are the two points at issue in that case) are not proved. I place no reliance upon the oral evidence adduced in support of these two material points. According to the plaintiff's own showing defendant had been ousted by the malik for possession, and plaintiff had been established in his stead. Under such circumstances, it is quite incredible that the ousted ryot would voluntarily receive charge of the next year's crop from the person who had dispossessed him, and who moreover was a cousin of the zemindar with whom he was at enmity, and who had filed an action against him for arrears alleged to be due on account of former years.

ORDERED,

That this appeal be dismissed, with costs, and the decision of the moonsiff be affirmed.

THE 31ST MAY 1850.

No. 41 of 1849.

A Regular Appeal from a decision passed by Syed Mahomed Waheedooddeen, late Moonsiff of Sewan, dated 23rd January 1849.

Sheik Tofail and Sheik Bhoton, (Defendants,) Appellants,

versus

Rugobeer Sahoo, (Plaintiff,) Respondent.

CLAIM, Company's rupees 106, 10 annas, 8 pie, being the principal, including interest, and exchange of a loan on lease of land.

Plaintiff sets forth that defendants had borrowed from him rupees 50, and had executed a deed of lease on advance, dated 5th Poos 1239 Fussily, for five years, (viz., from 1239 to 1243 Fussily inclusive,) in which it was stipulated that if the debt was not repaid within the specified period, the lease was to continue until at the end of any subsequent year it might be paid. Plaintiff alleges that in 1244 F., on the expiration of the lease, defendant dispossessed him without paying the principal, (the interest of the debt was to be realized from the usufruct.) Plaintiff accordingly sues for the original loan, amounting to Company's rupees 50 with exchange, (rupees 3, 5 annas, 4 pie,) amounting to rupees 53,

5 annas, 4 pie, and a corresponding sum on account of interest, total Company's rupees 106, 10 annas, 8 pie.

Defendants deny the transaction *in toto*, and declare that the 2 beegahs of rent-free land at Aligunge alluded to, had been leased to another person, (Rampershad Saho,) a third party to this suit, and that the said land is still in his possession.

The third party sides with defendants, and the mohurrir deputed to make a local enquiry found this third party in possession. This later lease is from the years 1230 to 1240 Fussily, upon an advance of rupees 25, and was likewise to run on until the loan was repaid.

The moonsiff considered the claim of plaintiff to be proved, and, rejecting the claim of the third party as not cognizable in this suit, decreed for plaintiff the full amount demanded, with interest to date of payment.

JUDGMENT.

I am of opinion that this case has not been sufficiently investigated, and the decree is moreover opposed to the specific contract entered into between the parties. It was stipulated that the lease was to be continued until the loan was repaid, or in other words it was optional with the defendant to repay when he pleased, therefore to justify a claim for immediate payment, on the part of plaintiff, proof of *dispossession* should have been required. No evidence on this point has been taken; and unless it is satisfactorily proved that plaintiff was dispossessed, an action for the recovery of the money lent will not lie. Two out of four witnesses are said to have died; and if the moonsiff considered that the lease on advance was sufficiently proved by the remaining two, he should have called upon plaintiff to prove the alleged fact of dispossession. It is observed that the third party set forth that his lease on advance commenced from 1239 F., and that he has been in possession of the same land ever since, and was stated to be in possession by the deputed mohurrir; it does not therefore appear how plaintiff could also have been in possession from 1239 to 1243 Fussily, as set forth in the plaint: the evidence does not clear up this apparent discrepancy.

ORDERED,

That this appeal be admitted, with refund of stamp duty, and the case be sent back for re-trial.

THE 31ST MAY 1850.

No. 38 of 1849.

Regular Appeal from a decision passed by Syud Mahomed Waheedood-deen, late Moonsiff of Sewan, dated 26th January 1849.

Isrcepershad Opadea, (Plaintiff,) Appellant,

versus

Bulaton Rai and Rajkoomar Rai, (son,) (Defendants,) Respondents.

CLAIM, for arrears of rent upon a putwarry's account, viz. :—

	Co.'s Rs.	As.	P.
For 1248 and 1249 Fussily,	88	8	0
„ 1251 to 1254 Fussily,	43	8	0
Interest,	77	4	9
Exchange in Co.'s rupees,	13	15	3
Co.'s Rs....	223	4	0

This suit was instituted on the 3rd July 1848. It was alleged by plaintiff, the village malik, that defendant cultivated 8 beegahs and 16 cottahs at Sicca rupees 44, annas 4, in the two former years 1248 and 1249 Fussily and the same quantity of land in 1250, at half produce, and 6 beegahs, at 30 rupees cash, during the five remaining years (1251 to 1254 Fussily.)

The defendant (Bulaton) denied having cultivated any land in 1248-49, but admitted cultivating at half produce in 1250 Fussily, after which he obtained a lease, dated 5th Assar 1250 Fussily, for 6 beegahs, at 18 rupees per annum for 1251 Fussily, at which rate he paid his rent and obtained receipts, and that no regular “ishtihaar” had been issued, demanding a higher rent, and that plaintiff's sole object was to oust him from possession, and establish his own cousin, Hurruk Opadea, in his place. In reply, plaintiff denied having given any lease.

The moonsiff of Sewan was of opinion that as rent was admitted to have been paid in full in 1250 Fussily, it was improbable that any arrears existed for the two years preceding; for if there had been any outstanding balance the payment of 1250 Fussily would have been first taken in liquidation of arrears, as is customary in the adjustment of rent, and if in arrears plaintiff would not have appointed defendant his gomashtha in 1250 Fussily. The “ishtihaar,” issued in 1250 Fussily to have effect from 1251 Fussily, was found to be in contravention to law, (Section 9, Regulation V. 1812,) the “specific rent” not having been specified. In accordance therefore with Section 10, (which rules that, unless a written engagement be entered into, or formal written notice be given, no greater rent shall be exigible than the tenant was bound to pay under his previous engagements,) the moonsiff adjusted the claim

at the rate of rupees 9, annas 2 per annum, for four years, finding that rent had been paid at that rate,* and receipts given from 1251 to 1254 Fussily, awarding interest (5 annas) for the less payment in

*Viz., for 1251 F., Rs.	15	0	0	1251 F. (rupees 4-2,) subsequently
1252 " "	23	4	0	liquidated on 17th Bysack 1252
1253 " "	19	2	0	Fussily, together with an item of costs
1254 " "	19	2	0	(rupees 1, annas 3, pie 9,) in proportion, in favor of plaintiff, total
				Company's rupee 1, annas 8, pie 9.

Finding no sufficient reason to interfere with the above decision, which appears just and proper,

ORDERED,

That this appeal be dismissed, with costs, and the decision of the moonsiff of Sewan be affirmed.

THE 31ST MAY 1850.

No. 51 of 1849.

A Regular Appeal from a decision passed by Mahomed Wajid, late Moonsiff of Chumparun, dated 10th February 1849.

Maharaja Koomar Mohindur Kishwur Singh, (Plaintiff,) Appellant,

versus

Chukon, Purshun, and Nund Lal, (Defendants,) Respondents.

CLAIM, Company's rupees 19, 8 annas, on account of bamboos sold as per account, dated 15th Maugh 1255 Fussily.

This suit was instituted on the 18th May 1848. It appeared that Jadoopore had been a nankar village in possession of defendants, and which was subsequently assessed and sold to plaintiff for arrears of Government revenue. Plaintiff asserts that, on the 15th Maugh 1255 Fussily, defendants purchased 300 bamboos from the said property at rupees 6, 8 annas per 100, promising to pay in fifteen days: failing so to do, this suit is instituted to recover the amount, viz., Company's rupees 19, 8 annas.

Defendants positively deny having purchased the said bamboos, stating that they had planted them, and that plaintiff's people, after the sale for arrears of revenue, had cut and carried them off, and that they were entitled to their one-half share, and that this suit had been instituted to deprive them of their contingent right.

Eight witnesses are adduced by plaintiff to the alleged sale, but the moonsiff considered it improbable that defendants would, by purchasing the bamboos as stated, thus cancel their legal claim to share in the bamboos, and, placing no reliance on the oral evidence, (which alone was produced in support of this claim) dismissed the suit, with costs.

JUDGMENT.

The alleged purchase by the defaulters from the new proprietor is certainly very improbable, especially after defendants had been summarily ousted from possession. Nor is it likely that the raja's people would have allowed defendants to cut and carry away 300 bamboos from his newly acquired property without taking some acknowledgment or security for payment. Plaintiff states, in his reply, that the bamboos were not planted by defendants, but by absconded assamees, and brings village officers to swear to this also; their testimony however, on this point, is quite incredible.

Under the circumstances, I am induced to concur with the moon-siff in discrediting the evidence adduced. The contingent right of defendants in the said bamboos is not, however, clear, for they were *nankar proprietors* and not mere *cultivators*, and after their entire rights and interest in the property had been transferred by sale to plaintiff (the maharaja's son) it does not appear what remaining rights accrued to them.

ORDERED,

That this appeal be dismissed with costs, and the decision of the lower court be affirmed.

THE 31ST MAY 1850:

Nos. 52 and 53 of 1849.

A Regular Appeal from a decision passed by Mahomed Wajid, late Moon-siff of Chumparun, dated 10th February 1849.

Maharaja Nowul Kishwur Singh Bahadoor, (Plaintiff,) Appellant

versus

Chukon, Purshun, and Nund Lal, (Defendants,) Respondents.

CLAIM, Company's rupees 85, on account of seven trees (sisu and mangoe) sold to defendants as per account, dated 5th Maugh 1255 Fussily.

This suit was instituted on the 18th May 1848. In this case plaintiff asserts that defendants (whose *nankar* lands had been separately settled and sold for arrears to plaintiff's son) purchased on the above date, from plaintiff's agent, four sisu trees for rupees 60 and 3 mangoe trees for 25 rupees, total Company's rupees 85, and delays payment, which renders it necessary to bring this action to recover the amount.

Defendants deny having purchased the trees as alleged, stating that they were planted by their ancestor, and are situated on 47 beegahs of *mokurruree* land (paying a quit rent of rupees 23, 8 annas,) and that the *maharaja's* people had wrongfully cut and carried off nine sisu trees and forty mangoe trees, and he, anticipating a suit against him, had forestalled defendants by instituting this suit.

In reply, the *mokurruree* tenure is of course denied, adding that the trees were situated in Sheopershad's garden in the nizamat estate, and that the ryots' share had been previously sold for arrears of rent.

The moonsiff took the evidence of eight witnesses, cited by plaintiff in support of his claim, and deputed a mohurrir, who took the evidence of three other persons on the spot, discrediting the evidence for the prosecution in regard to the sale of the trees, but believing the local enquiry in which a single witness deposed to the cutting of two *sisu* trees by Nund Lal (one of the defendants) awarded the value of the two trees, viz. Company's rupees 30, with rupees 20, 1 anna, costs, total Company's rupees 50, 1 anna.

JUDGMENT.

Both parties appeal in dissatisfaction, and, for the reasons detailed in the former suit No. 51, I am of opinion that the alleged sale of trees to defendant for 85 rupees is not proved. The eight witnesses, who have given evidence in favor of plaintiff in this and the foregoing suit, I observe are the same, although the transactions are said to have occurred on two different dates (viz., the 5th and 11th Maugh 1255 Fussily.) Moreover the raja's people would certainly not have allowed the cutting and carrying away of seven trees although sold, without some acknowledgment or security given for payment; nor is it probable that the ousted proprietor would purchase these trees from the new proprietor, retaining as he imagined a contingent right in the trees. No document is forthcoming, and although the claim is stated to be founded upon an *account*, no account is filed. In regard to the amended award of the moonsiff for the value of two *sisu* trees, such award is extra judicial and irregular. The cause of action was the alleged purchase of 7 trees on a certain date for a certain sum; and a decree has been given for the value of *two trees said to have been cut and carried away surreptitiously by Nund Lal*, one of the defendants, upon the evidence of a single witness (Aboo Mahomed,) who does not give either the date or the month of the said transaction.

The issue of fact in this case is the alleged sale of 7 trees for the sum of 85 rupees on the 5th May 1255 Fussily, as per account, and which (as admitted by the moonsiff) is *not proved* to the satisfaction of the court.

The real dispute between the parties to this suit is evidently the validity of defendant's *mokurruree* tenure, and which at present is kept out of sight, but will probably form the ground of a separate action after this preliminary suit is disposed of.

ORDERED,

That the moonsiff's decision be reversed, and the claim of plaintiff be dismissed, with costs.

ZILLAH SHAHABAD.

PRESENT: H. J. BROWNLOW, ESQ., JUDGE.

THE 3RD MAY 1850.

No. 11 of 1849.

*Regular Appeal from the decision of Syed Munour Ally, late first grade
Principal Sudder Ameen of Shahabad, dated 25th January 1849.*

Omcid Ojha, (Plaintiff,) Appellant,

vs

Sohun Ojha and three others, (Defendants,) Respondents.

THIS action was brought by the plaintiff (appellant,) on the 16th March 1848, in order to obtain possession of a tenement consisting of 18 beegahs, in mouzah Simurreeah, pergunnah Beteeah, together with its mesne profits for the years 1254 and 1255 F., valued at rupees 536-1½.

The plaintiff affirms that he holds a cultivation of 81 beegahs in mouzah Simurreeah, which is the property of Baboo Dyal Singh, and grew a rubbee crop on 18 beegahs of the same in 1253 F., which was appropriated by the defendants. That the plaintiff sued them before the moonsiff of Gurhane, before whom they admitted him to be the occupant, but, denying the appropriation of the produce at issue, asserted having mortgaged 19 beegahs of their holding for the sum of rupees 150, under a deed, dated the 1st Sawun 1877 Sumbut, which they stated they had also redeemed by the refund of the loan in 1252 F. That the moonsiff dismissed the plaintiff's suit; but, upon his proceeding to cultivate the land in question, the defendants stopped him by a suit under Act IV. 1840, alleging that they held a tenure of 25 beegahs, out of which they had mortgaged 18 beegahs, and were opposed in their occupation of 6 beegahs by the plaintiff; that he was accordingly bound down under a penalty bond and has ceased to be in possession; that the proceedings held under Act IV. 1840 are incorrect, inasmuch as the defendants have themselves owned the plaintiff to be in occupation of the above mentioned 18 beegahs, and besides a bond for the sum of rupees 64, in lieu of which beegahs 6-10 was mortgaged, and which the defendants have taken back after having discharged the loan, they were unable to state before the moonsiff, who questioned them on the subject, how many other parcels they had mortgaged and for what amount.

The defendants answer that the land claimed is an ancestral holding of theirs, and was mortgaged by their ancestor, together with certain trees, &c., to the plaintiff, for the sum of rupees 150 in 1247 F. That Pillooah Ojha, the father of the defendants, refunded the debt in Assar 1252 F., notwithstanding which the plaintiff had recourse to violence, the consequence of which was that the defendants' father lost his life. That this was followed up by an indictment in the criminal court, and the plaintiff, apprehending that the result would be serious, executed a deed on the 28th Assar 1252 F., to the effect that he had realized all the debts owing to him, and had relinquished the property, which he held in mortgage from the defendants; that this instrument was made over to the custody of Bheechook Misr, who, upon the release of the plaintiff and his sons, delivered it to the defendants; that the latter entered into possession in 1253 F., and have occupied ever since. That the plaintiff subsequently prosecuted the defendants in the criminal court, and before the moonsiff, in consequence of their having refused to eat with him, when the deed mentioned was produced and verified by Bheechook Misr, which led to the dismissal of the plaintiff's suit by the moonsiff, and the confirmation of that order in appeal.

The principal sudder ameen dismissed this case, being of opinion from the evidence before him that the land at issue pertained to the defendants' holding, and had been redeemed from mortgage in the manner set forth in the defence.

In appeal, it is contended that the land sued for never was mortgaged by the respondents, but appertains to the appellant's ancestral holding; that no mortgage having been established, redemption is out of the question; that not one of the respondents' witnesses has deposed to the amount of money, the date of mortgage, or the manner of its redemption; that the respondents, moreover, never made mention of the mortgage of the land involved in this action in the suits that have gone into the criminal and moonsiff's courts, but of beegalis 6-10, which the appellant himself acknowledges; and finally the appellant ignores the deed of the 28th Assar 1252 F.

This document, I observe, is written upon an 8 anna stamp only; and before the principal sudder ameen could give any weight to it, it behoved him carefully to consider whether that amount was sufficient for what it purported to cover, with advertence to the requirements of Regulation X. 1829. Secondly, the evidence of Bheechook Misr also, to which the principal sudder ameen attaches some importance, is only a copy of what he deposed to in *another* case, in *another* court, at *another* time. This is perfectly inadmissible whilst the deponent is still living, who might and should be examined *de novo*. Thirdly, not a single attesting witness to the deed of the 28th Assar 1252 F. has been examined, which makes the evidence adduced in support of its validity very far from what was attainable, and very far from what was requisite to come to a right

understanding on the subject. The case is remanded for re-trial to the lower court, with reference to the above remarks, and the usual order will issue for the refund of stamp value.

THE 6TH MAY 1850.

No. 12 of 1849.

*Regular Appeal from the decision of Syed Munour Ally, late first grade
Principal Sudder Ameen of Shahabad, dated 26th January 1849.*

Soodistnarain Singh, (Plaintiff,) Appellant,

versus

Ramperkash Singh and twenty others, (Defendants,) Respondents.

THIS suit was instituted by the plaintiff (appellant,) on the 7th February 1849, for the possession of a tenement of 40 beegahs, in mouzah Sheo Deoree, pergunnah Arrah, as well as for the realization of the mesne profits of the same, amounting, for the year 1255 F., to rupees 240.

Plaintiff alleges that in the year 1250 F., an alluvial tract of 200 beegahs formed by accretion to mehal Sheo Deoree, a Government estate, and was let by the tehsildar of Government in parcels of 40 and 20 beegahs, to several individuals, amongst whom the plaintiff also obtained a parcel of 40 beegahs, at the rate of 4 annas per beegah, for the present, but liable to future adjustment with reference to the capability of the soil. That although the land in question was not culturable in 1250 F., still the plaintiff paid the rent of that year. That in 1251 F., Bheenik Roy, Dobe Roy, and several others dispossessed the plaintiff, and grew a rubbee crop on his holding, with the aid and assistance of Ukbur Singh and others, and that the latter combined with their shareholders and finally ejected the plaintiff in 1252 F. That the plaintiff notwithstanding paid the rent of both these years; but, perceiving the defendants disinclined to restore his holding, he prosecuted them on the 18th December 1847, and his example was followed by Lullit Singh, another shareholder, who had been similarly disseised. That the result of these suits was that Ukbur Singh and others, the principal cultivators, admitted the justice of the plaintiff's claim, and paid him the rents from 1251 to 1254 F., upon the arbitration of Jugdum Sahoy and Salig Ram Singh, who also decided that as 160 beegahs only of the 200 beegahs of alluvion were susceptible of cultivation, 32 beegahs should be severally allotted to the plaintiff and Lullit Singh; the other cultivators, viz. Bhoom Roy, Omed Singh, &c., keeping distinct possession of their respective allotments, each north of the plaintiff and of each other in consecutive order; that a deed of agreement was entered into by Ukbur Singh and others to the above effect on the

8th January 1847, and delivered over to the charge of Jugdum Sahoy, putwarree, and in consequence of this adjustment, the plaintiff filed a razeenamahi in his suit, but the defendants have nevertheless dispossessed him from his share.

Jeo Rag Roy, one of the defendants, asserts that his son, Ram Pertab Roy, cultivated only 20 beegahs up to 1253 F., and made over the same to Mahadaololl in the following year, and never executed the agreement bond alluded to by the plaintiff.

Mahadaololl and Utloololl deny the ikrarnama, affirming that, if the deed were a genuine one, it would have been forthcoming in the plaintiff's former suit, in which no such instrument was tendered; that the plaintiff's tenement lies to the north of the holdings of the five shareholders; that he is in possession, having sublet a portion of it to others; and that the object of the present suit is to oust Mahadaololl from the 20 beegahs which he has acquired from Ram Pertab Roy.

Ram Perkash Roy and others, defendants, disown being parties to the ikrarnamah and under-tenants of Ukbur Singh, but acknowledge holding several parcels of land from the lessee of mehal Sheo Deoree since 1255 F.

Shamlall, defendant, admits holding 20 beegahs in the name of Bhoom Roy, which, he states, the plaintiff himself declares to be south of his own cultivation, with which the plaintiff has never interfered.

The principal sudder ameen dismissed the case, observing that the plaintiff had not filed the ikrarnamah mentioned by him, and that the defendants were in occupation of their respective holdings agreeably to certain pottahs. The plaintiff's tenement being apart from them, and in the cultivation of Bhuggut Roy and others.

In appeal, it is alleged that it was impossible for the appellant to have produced the deed of agreement, as Jugdum Sahoy, one of the putwarrees, who was charged with it, refused to attend the summons of the court, though pointed out by the peon who served the subpoena, without any notice being taken of his contumacy, and that the appellant himself being out of possession, it is not possible that he could have employed under cultivators to till on his behalf,

On reference to the record, I find that subpoenas were only served on the two witnesses Jugdum Sahoy and Salig Ram Singh, but that they contumaciously neglected to attend. Prior to the decision of the case, moreover, the plaintiff volunteered to satisfy the court by evidence on oath, that these witnesses were material to the cause. The principal sudder ameen, however, rejected the petition (in my opinion on insufficient grounds,) and on the following day decided the case in their absence. This was clearly opposed to the spirit of Section 6, Regulation IV. 1793. The case is, therefore, remanded to the lower court for re-trial, and the usual order will pass for the refund of stamp value.

THE 7TH MAY 1850.

No. 13 of 1849.

*Regular Appeal from the decision of Syed Munour Ally, late first grade
Principal Sudder Ameen of Shahabad, dated 15th February 1849.*

Nunda Goshain, (Defendant,) Appellant,

versus

Kallee Sahoy and Achhoybur Ojha, (Plaintiffs,) Respondents.

THE plaintiffs (respondents) preferred this action, on the 3rd April 1848, with the view to obtain possession of a 9 annas share of mouzah Bhoja Chuck, pergunnah Beeteeah, and to be enrolled as proprietors thereof, as well as to recover rupees 109-15-4-3 $\frac{1}{4}$, the mesne proceeds for the year 1255 F.

The plaintiffs assert that they purchased 9 annas of mouzah Bhoja Chuck from Girdharree and others, the proprietors, for the sum of rupees 1225, under a deed of sale executed by the latter on the 21st November 1847, or 29th Kartick 1255 F., duly signed, witnessed, and registered. That after this act, the plaintiffs went, attended by the sellers, to Nunda Goshain, who held the estate in conditional sale, and offered to redeem it by the refund of the debt of the late proprietors; but he, having colluded with them, refused to receive the money on the pretext that he had another claim against them, agreeably to an ikrarnama, which was stipulated to be satisfied simultaneously with the money due under the bill of conditional sale; that the ikrarnama is a fraudulent deed, and was first denied by the sellers, but subsequently admitted by them; and that, as the parties were referred to a regular suit in the miscellaneous proceeding held on the occasion, the plaintiffs have resorted to this complaint.

Girdharree, Bheekaree, and others, the defendants, answer that themselves and one Goordyal own 11 annas and 1 pie of mouzah Bhoja Chuck; that 9 annas of it is held in conditional sale by Nunda Goshain for the sum of rupees 972-9-9, under a deed, dated the 9th December 1846. That the defendants and Goordyal, having since borrowed the sum of rupees 774 from Nunda Goshain, executed an ikrarnama on the 18th October 1847, in his favor, on a promise to liquidate the amount together with the debt previously contracted; that the plaintiffs requested the defendants and Goordyal to transfer 9 annas of their share to them for rupees 1225, and engaged to redeem the conditional sale for the present and liquidate the money due under the ikrarnama hereafter, by taking in conditional sale the remaining 2 annas of their share; that upon these promises the defendants sold 9 annas of their share for the sum of rupees 1225, for which amount rupees 972-9-9 were deposited in court; but that the plaintiffs having neglected to abide by their

engagements, Nunda Goshain's claim under the ikrarnama remains unsatisfied and the plaintiffs' purchase cannot necessarily take effect.

The answer of Nunda Goshain corresponds with that of the aforementioned defendants, with respect to the liens held by him under the deeds of conditional sale and agreement.

The principal sudder ameen decreed this case in favor of the plaintiffs for possession and for the mesne profits, having rejected the deed of agreement as a suspicious document, in consequence of discrepancies in the testimony of the witnesses and the absence of formal registration.

In appeal, it is pleaded that the agreement bond was not registered on account of the intervention of the Dusserah vacation; but that registry is not essential to the validity of a deed; that the proper course for the respondents was first to have sued for the annulment of the ikrarnama and afterwards for possession. The appellant further urges that he is a mendicant of the order of "Nanuk Shahce," and had amassed by beggary the money at issue, of which he now finds himself defrauded by a combination of the respondents and his debtors.

The ikrarnama of the 18th October 1847, upon which the merits of defendant's case rests, is still an unregistered deed, and is wholly untrustworthy in consequence of the discrepancies and illiterate character of some of the witnesses. The two first being unable to read or write were not even shown the instrument, so it remains still unverified by them, and the statements of the third and the writer of the deed are so entirely opposed to that of Gunga Bishen Doss, the writer of the signatures of the contracting parties and of some of the subscribing witnesses, as to show at once the utter worthlessness of the testimony adduced. Considering, therefore, the judgment of the principal sudder ameen to be correct and proper, I confirm the same, and dismiss the appeal, with costs.

THE 9TH May 1850.

No. 14 of 1849.

Regular Appeal from the decision of Syed Munour Ally, late first grade Principal Sudder Ameen of Shahabad, dated 15th February 1849.

Madhoobun Doss, (Defendant,) Appellant,

versus

Isreepersaud, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff (respondent,) on the 5th May 1848, for the annulment of the sale of a fifth share in mouzah Bugwa, pergunnah Punwarrah, under a deed of sale, dated the 16th December 1843, in order to realize by a judicial sale thereof rupees 1391-0-1½, the amount of a decree, dated the 21st November 1837,

and for the reversal of a summary order issued on the 30th June 1847.

The plaintiff states that, on the enforcement of the decree of Ramkietaruck Singh, his father, Gokool Chund, the principal debtor, was arrested; on which occasion Gopaul Chund (the ancestor of Rekhub Doss, Sukkhee Chund, and Doorgah Persaud) pledged his fifth share in mouzah Bugwa, under a deed of security, dated the 10th February 1838, for the satisfaction of a decree, principal and interest, both inclusive, engaging till then to abstain from otherwise disposing of the property; that when the plaintiff's father again put his decree in force after crediting the sums recovered from the security, and desired the sale of the property, he was opposed by Sheo Sahoy Singh, the defendant, who pleaded an absolute sale to himself; that the sale was consequently stayed under an order, dated the 30th June 1847; that Sheo Sahoy Singh seeks to maintain his purchase by alleging that the sale was effected with the view to pay off the claims of Pudmun Koonwur and Monohur Doss, who held mouzah Bugwa in conditional sale prior to its impignoration by Gopaul Chund; but that this will not legalize the transfer, inasmuch as Pudmun Koonwur and Monohur Doss are related to Gopaul Chund, and, being cognizant of his act, would have protested against it if they held a *bonâ fide* lien on the property.

Mudhun Doss, one of the defendants, affirms that he is not the heir of the late Gopaul Chund, but that Lukhee Chund and Door-gah Persaud, his sons, are the only heirs; that although Rekhub Doss, the defendant's father, was the son of Gopaul Chund, yet having been adopted by Surnam Singh, his uncle, he (Rekhub Doss) can have no title to the inheritance of his natural father, much less has the defendant any right, and that the defendant has already been exonerated from liability for the decree acquired by the plaintiff's father under orders of the 30th June 1847.

Sheo Sahoy Singh, the defendant, urges that his purchase is not fictitious but genuine; that out of rupees 3900, the value paid by him for five annas of mouzah Bugwa, rupees 100 were paid to Chutterdharree, and the balance, viz., rupees 3800, was deposited in the civil court, and paid to Monohur Doss and Pudmun Koonwur, and also appropriated towards the liquidation of the decrees of Sobha and Jeolall Singh, under the orders of the court, dated the 13th January 1842, and that the plaintiff's father never objected to the conditional sale to Pudmun Koonwur and Monohur Doss, nor was the defendant himself at all aware of the lien alleged by the plaintiff.

The principal sudder ameen decreed this case in favor of the plaintiff, and adjudged a fifth share in mouzah Bugwa liable for his decree, remarking that the sale of the property, prior to the satisfaction of the decree, for which it was primarily pledged, was null and void, and that the conditional sale was not proved.

The appellant seeks to be exonerated from payment of the respondent's law charges for which he has been made responsible conjointly with the other defendants, on the grounds stated in his original defence, as well as in consideration of his not being even a party to the sale to Chowdree Sheo Sahoy Singh, which was effected by Lukhee Chund and Doorgah Persaud, the two other sons of Gopaul Chund, and on the score of having been once exempted from liability for the respondent's decree by the principal sudder ameen in his proceedings of the 30th June 1847.

The appellant is indisputably entitled to a consideration of the above pleas, which have been passed over *sub silentio* by the lower court. If he has been made jointly responsible with the other defendants for the payment of the respondent's law charges, &c. by an oversight, the principal sudder ameen will have the goodness to rectify the error; but if, on the other hand, it is intended that these costs should be jointly borne by the appellant, the principal sudder ameen will record his reasons for saddling him with them, in order that the appellate court may judge of their validity or otherwise.

The case is therefore remanded for re-trial, but the principal sudder ameen will confine his investigation exclusively to the point indicated. The usual order will pass for the refund of stamp value.

THE 9TH MAY 1850.

No. 15 of 1849.

Regular Appeal from the decision of Syed Munour Ally, late first grade Principal Sudder Ameen of Shahabad, dated 15th February 1849.

Chowdree Sheo Sahoy Singh, (Defendant,) Appellant,

versus

Isreepersaud, (Plaintiff,) Respondent.

THIS case having been remanded for the re-trial of a certain point indicated in the preceding appeal No. 14, no final judgment on its merit can now be passed. As connected therewith it is merely sent back to the lower court, with injunctions to confine the re-investigation to the matter set forth in that appeal. The usual order will pass for the refund of stamp value.

THE 11TH MAY 1850.

No. 16 of 1849.

Regular Appeal from the decision of Syed Munour Ally, late first grade Principal Sudder Ameen of Shahabad, dated 16th February 1849.

Surnam Roy and five others, (Defendants,) Appellants,

versus

Ramjeetun Loll and two others, (Plaintiffs,) Respondents.

THIS action was preferred by the plaintiffs (respondents,) on the 25th February 1848, for the recovery of rupees 1293-33 $\frac{1}{4}$, being principal and interest of a debt due under a bond, dated the 23rd Jyte 1252 F.

The plaintiffs allege that Surnam Roy and others being indebted to Lukhee Chund and Doorgah Persaud, the sons and heirs of Gopaul Chund, to the amount of rupees 974-8 $\frac{1}{4}$, they executed the bond in question in their favor, mortgaging certain estates, and engaging to refund the debt in Bhadoon 1253 F.; but that notwithstanding the expiry of that period the debtors having neglected to repay the loan, Lukhee Chund and Doorgah Persaud sold their claims, now amounting with interest to rupees 1291-4 $\frac{1}{4}$, in the proportion of four annas to Ram Jeetun Lall, four annas to Lukhee Chund and eight annas to Lukhee Roy, agreeably to a deed, dated the 30th January 1848, according to which the plaintiffs now sue.

Surnam Roy and others, defendants, answer that they never executed any bond in 1252 F., nor were their transactions joint; that Surnam Roy and Ublak Roy only borrowed money from Gopaul Chund, the former rupees 216, on one occasion, under a bond, dated the 17th Bhadoon 1240 F., and on another rupees 650, under a deed, dated the 5th Maugh 1246 F., and the latter rupees 160, but that, on their neglect to pay the debts within the limited periods, the heirs of Gopaul Chund, upon the bankruptcy of their father, sold the debts of Surnam Roy, of 650 and 216 rupees, to Pudmun Doss and Jugernath Sahoy, respectively, and Ram Ublak's debt of rupees 160 to Urhunt Doss and Rummye Tewarree, all of whom having sued and obtained decrees have realized their several claims.

Lukhee Chund and Doorgah Persaud, two of the defendants, acknowledge having sold the bond at issue to the plaintiffs.

The principal sudder ameen decreed this case in favor of the plaintiffs for the full amount claimed, on the evidence of their witnesses who verified both the bond and the debt.

In appeal, it is argued that as the original record of the debt involved in this action is said to have been contained in the banking books of the late Gopaul Chund, they should have been produced and examined, and that it is improbable that a banker, who has once given small loans to an individual upon the execution of bonds, would lend him larger sums on the bare entry of the amount in his books.

The deed of the 23rd Jyote 1252 F., corresponding with the 13th June 1845, is satisfactorily proved to have been executed by the contracting parties after an adjustment of accounts in the presence of some of the witnesses; there is no necessity therefore for sending for the banking books of the late Gopaul Chund. There is nothing moreover adduced in the defence to lead me to question the validity of this bond. And considering the judgment of the principal sudder ameen to be in accordance with the facts proved, I confirm the same, and dismiss the appeal, with costs.

THE 14TH MAY 1850.

No. 17 of 1849.

Regular Appeal from the decision of Syed Munour Ally, late first grade Principal Sudder Ameen of Shahabad, dated 17th February 1849.

Balgobind Sahoy and twenty others, (Defendants,) Appellants,

versus

Heera Ram, (Plaintiff,) Respondent.

THE plaintiff (respondent) preferred this action on the 27th March 1848, with the view to obtain possession of a holding of 30 beegals in mouzah Chunda Akhoree, pergunnah Arrah, together with its usufruct from 1249 to 1255 F., amounting to rupees 1152-8, by the reversal of the orders of the criminal court, dated respectively the 31st August and 2nd December 1842.

The plaint sets forth that the land in question originally formed the tenement of Saheb Ram and Nowab Ram, who mortgaged it to the plaintiff for the sum of rupees 200 under a deed, dated the 24th Sawun 1237 F.; that the plaintiff held possession from the year following, paying annually to the maliks at the rate of two half maunds per beegah from the produce up to the year 1248 F.; that in 1249 F., Punjab Roy, the surbarakar, dispossessed the plaintiff, when Shoukloll, his grandson, resorted to the criminal court and was restored to possession by order of the principal sudder ameen, dated the 31st January 1843; but that on a hearing of the case under Act IV. 1840, the magistrate dismissed the plaintiff's suit for possession, and his order was upheld in appeal; that the plaintiff's disseisure has accordingly taken place from 1249 F., hence this suit.

Balgovind Sahoy and others, defendants, answer that neither Nowab Ram nor Saheb Ram cultivate any land in mouzah Chunda Akhoree, but that Futteh Singh and Sheo Buksh, the ancestors of the defendants, admitted the fact of Golaub Doss and Mahawul Doss being cultivators, in their answer, dated the 16th April 1788, to the suit for possession of 250 beegahs, brought by the latter with the view to negative the claim for possession set up by them; but

that the land was shortly afterwards withdrawn from their occupancy and settled with other persons who continue to hold it, and that the deed of mortgage pleaded by the plaintiff is spurious, not being attested either by the cazee or register.

The answers of Ublak Singh, the heir of Saheb Ram, and of Nowab Ram, the heir of Golaub Doss, correspond with the plaint.

The principal sudder ameen, on the strength of the admission made by Sheo Buksh Singh and Futteh Singh, alluded to in the answer of Balgovind Sahoy, and the decree passed in that suit on the 21st August 1788, decreed to the plaintiff possession of the land sued for, with rupees 586-8, as the mesne proceeds.

In appeal, it is contended that the occupation of Saheb Ram and Nowab Ram itself not having been proved by any deed or decree of court, nor their names being inserted in the village papers, the alleged right of the respondent, who professes to hold from them, necessarily falls to the ground. That the kubooleut of the 13th Zehij 1189, agreeably to which the principal sudder ameen states that Golaub Doss and Mahawul Doss occupied the land at issue, is not forthcoming on the record, and that although the acknowledgment attributed to Futteh Singh and Sheo Buksh, upon which the principal sudder ameen has chiefly founded his decree, was made, yet it was met by the positive denial of Golaub Doss and Mahawul Doss, and cannot therefore be productive of any benefit to the respondent's cause.

From the evidence, both oral and documentary, alluded to by the principal sudder ameen, it is clearly proved in my opinion that the land *sub lite*, viz., 30 beegahs in mouzah Chunda Akhoree, was the hereditary tenement of Saheb Ram and Nowab Ram, for which they paid annually, to the maliks, from the produce, at the fixed rate of two and half maunds per beegah. That they subsequently mortgaged their rights and interests in this land to the plaintiff, under a deed, dated the 24th Sawun 1237 F., who held possession on similar terms, I also find proved by the testimony of plaintiff's witnesses. He is therefore fully entitled to the decree which the principal sudder ameen has given him, together with the mesne proceeds as determined by that officer. The kubooleut of the 13th Zehij 1189, (a copy of which has been filed,) together with the admission of Futteh Singh and Sheo Buksh, the ancestors of the defendants, relative to these 30 beegahs, dated the 16th April 1788, place the case for the plaintiff in a very clear light. The decision of the lower court therefore is upheld, and the appeal dismissed, with costs.

ZILLAH SYLHET.

PRESENT: H. STAINFORTH, Esq., JUDGE.

THE 1ST MAY 1850.

No. 61 of 1850.

*Appeal from the decision of Baboo Hergouree Bose, Moonsiff of
Russoolgunge, dated 31st January 1850.*

Sheikh Machoo, Appellant,

versus

Khyroolah, Respondent.

RESPONDENT sued under a bond, noticing that the matter in suit had been referred to arbitrators, who had been gained over, and who are sued.

Appellant objected, among other matters, that the suit is untenable, the matter having been referred to arbitration; and that the arbitrators had been sued, that their evidence might be barred.

The moonsiff (Baboo Hergouree Bose) held the suit tenable, as no award had been passed; and holding the claim proved, he decreed against appellant.

Appellant now repeats his former pleas.

JUDGMENT.

The suit, instituted on 1st Assar 1256, appears to be untenable, because the matter at issue was referred in Maugh 1255, by the parties, to arbitrators, who were about to give an award, and because the arbitrators have evidently been sued that their evidence might be barred.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and respondent nonsuited, with costs.

THE 2ND MAY 1850.

No. 26 of 1850.

Appeal from the decision of Moonshee Nuzerooddeen Mahomed, Moonsiff of Parkool, dated 20th December 1849.

Surroopchunder Dass, Appellant,

versus

Ramgobind Dass and others, Respondents.

RESPONDENTS sued to be allowed to use, as they had used for a long time, part of a path which runs from appellant's house, by their (respondents') compound, to the high road.

Appellant resisted the claim, declaring the path to be his own private property; that it has never been dedicated as a public road; that the females of the parties used to visit each other's houses, and that thus respondents were allowed to use his path, which he, appellant, has closed in consequence of disputes since the 9th Sawun 1254 B. S.

The moonsiff (Moonshee Nuzerooddeen Mahomed) held it proved that respondents, and the people of their baree, had used the path for some time, and, after visiting the place and making enquiries there, he decided that they should continue to use it in such manner, but he provided that, on access of any large body of persons to respondents' house, they should go by the old road, which is at present closed.

Appellant now applies for the entire closure of the road against respondents, who have likewise appealed, praying that it may be opened unconditionally.

JUDGMENT.

I have visited the place of this dispute. I hold it proved, by the evidence and the tenor of the plaint, that the path in suit is on appellant's land. It runs from his house, outside of respondents' compound, to the high road. There is an outlet upon it, from respondents' compound, which from its position countenances the appellant's statement, which is confirmed by evidence, that it was in the first instance made for the interchange of visits by the females residing in the houses of the parties who are relations. But not only do respondents appear, from the evidence, to have used the path in its north-easterly course towards appellant's house, but in its westerly course towards the highway. They have enjoyed this latter use of it for upwards of twelve years, and the main question for decision is, from what time the bar of the law of limitation begins to run, whether from the time the road was first used by respondents, or the time when its use was disputed. The path is not, as has been observed, a highway, but a private path traversing appellant's compound, and used for a long time by

respondents. Its use must have been allowed by appellant, but there is no ground for supposing that, in thus allowing the use of his path to respondents, he intended to convey permanent right to use it, and, it having been thus used permissively, I am of opinion that respondents' claim cannot be held to commence from the time it was so used, but from the time the permission was asserted to convey permanent right, in the same way that the law of limitation is held to run not from the date of a fraud, but from the date of the discovery of it. If I did not come to this conclusion, I must come to the conclusion that one man has only to walk daily for twelve years across another's compound to establish a right to do so thereafter, but such conclusion seems to me preposterous. I am then of opinion, respondents have not made out the right of way which they claim, and that his suit must be dismissed.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit dismissed, with costs.

THE 2ND MAY 1850.

No. 29 of 1850.

Appeal from the decision of Moonshee Nuzerooddeen Mahomed, Moonsiff of Parkool, dated 20th December 1849.

Ramgobind Das, Appellant,

versus

Surroop Chunder, Respondent.

THIS is the cross appeal in the suit under which respondent appealed under appeal No. 26, and having, in that appeal, come to the conclusion that appellant's suit is untenable, and having ordered its dismissal,

IT IS ORDERED,

That this appeal be dismissed, with costs.

THE 4TH MAY 1850.

No. 80 of 1850.

Appeal from the decision of Baboo Hergouree Bose, Moonsiff of Russoolgunge, dated 3rd March 1850.

Mahomed Asir and others, Appellants,

versus

Abjan Beebee, Respondent.

THE moonsiff has misunderstood the plaint in this case to be for possession of land belonging to a talooka, which has been assessed and settled with a lakhirajdar, but appellants claim as owners of

the land as lakhiraj, purchased by them before the decennial settlement, and held clandestinely as lakhiraj, in order to avoid the payment of revenue. Under such circumstances, the suit must be remanded for re-investigation.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed and the suit remanded. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

THE 6TH MAY 1850.

No. 172 of 1849.

Appeal from the decision of Moonshee Nuzeroodeen Mahomed, Moonsiff of Parkool, dated 5th September 1849.

Soobul Chund Deb, Appellant,

versus

Unnundnath Rai, and others, Respondents.

RESPONDENTS sued for the value of trees, which appellant cut and carried away from within the boundaries of their baree, or homestead, specified in the plaint.

Appellant resisted the claim, declaring the trees to have stood within the limits of the Kalee Baree founded by his inheritee, and which is under his care.

The moonsiff (Moonshee Nuzeroodeen Mahomed) held it proved, by the evidence of witnesses examined by him and the local enquiry of an ameen, that the trees had been taken from respondents' homestead, and finally decreed the claim.

Appellant has urged, in appeal, that the roots of the trees are still visible in the foundation of the wall enclosing the Kalee Baree, praying the judge to visit the place and inspect them.

JUDGMENT.

I have, as requested, visited the place of the strife. Appellant was in attendance; and the only two of the numerous persons present who were acquainted with the circumstance told me that one of the trees for the value of which this suit is brought and of which alone the stump was found, grew on the northern side of the dilapidated wall, *i. e.* respondents' land, and while appellant's witnesses have not sworn that the trees were in appellant's land, respondents' witnesses have sworn, with apparent truth, that they were on respondents' land. I therefore see no reason for interference.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the moonsiff's decree affirmed, with costs.

THE MAY 1850.

No. 79 of 1850.

Appeal from the decision of Baboo Chunder Kishwur Rai, Moonsiff of Hingajeeah, dated 28th March 1850.

Netaye Ram Deb and Beydun Ram Dhur, Appellants,

versus

Kant Ram Dhur and others, Respondents.

THE suit was remanded, on the 27th of August last, for local enquiry, and the moonsiff has declared the appellants to have been in league with Banee Ram in causing the illegal sale of respondents' property, and he has on this ground saddled appellants with their own costs. To me it seems that, if appellants colluded with Banee Ram, they should be made jointly liable with him, or be relieved altogether; and that the suit should be remanded for this purpose on the record of the reasons under which a defferent course is approved by the moonsiff.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for decision with reference to the foregoing remarks. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

THE 7TH MAY 1850.

No. 35 of 1850.

Appeal from the decision of Baboo Chunderkishwur Rai, Moonsiff of Hingajeeah, dated 24th December 1849.

Ramshurrun, Appellant,

versus

Bishunchurrun, Respondent.

APPELLANT was sued as security under a bond, and a decree has passed against him and Gourgobind Surmah, the principal.

He urges, in appeal, among other matters, that Gourgobind has not received due notice of the suit; and, as I find, from the investigation made through the fixed ameen under the moonsiff's order; that Gourgobind's ordinary place of residence has been, for the last 5 or 6 years, in pergunnah Chycherree, whereas the notices have been served at his old dwelling place, in pergunnah Burmchal, it is necessary to remand the suit as incompletely investigated.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for disposal with reference to the foregoing remarks. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

THE 10TH MAY 1850.

No. 19 of 1850.

Appeal from the decision of Moulvee Waris Alee, Moonsiff of Nubbeegunge, dated 18th December 1849.

Juddoonath, Appellant,

versus

Gourkishwur Deb, Respondent.

APPELLANT and others sued for reversal of a summary decree, passed against them as tenants, in 1253 B. S., of 1 kear 1 pao of land in talooka Radharam, No. 47, they tenanting no such land, being tenants only of 9 kear 2 pao in talooka Nurdishur Das, the property of Joogulkishwur Das and others, on the yearly rent of 1 rupee 14 annas; and they claim 8 rupees 4 annas, as the sum paid by them under the decree, with costs.

Respondent answered, asserting appellant, &c., tenants of land, as per boundaries cited by him, the property of himself and his *hamtaum* uncle, Rajkishun Deb, and pleaded that the rent, which had been paid in previous years, was withheld in 1253, but was admitted in a petition, given to the peada, who took out the dustuk in the summary suit, in proof of which the decree was passed.

The moonsiff (Moulvee Waris Alee) dismissed the claim, on account of discrepancies in the evidence of the witnesses, and because the *fariq* or acquittance filed by appellant was at variance with his statement.

Appellant now urges that the discrepancies are imaginary, and that he has other witnesses.

JUDGMENT.

The merits of this case are not very clear from the papers, and it must be remanded for local enquiry whether appellant did or did not tenant respondent's land, as he says, and on the rent declared by him, in 1253.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for the enquiry indicated above. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

THE 10TH MAY 1850.

No. 33 of 1850.

Appeal from the decision of Baboo Chunder Kishwur Rai, Moonsiff of Hingajeeah, dated 21st December 1849.

Ghouse Alee Khan and another, Appellants,

versus

Lalchund Deb, Respondent.

THIS is a suit for the value of rice, the crop of some land, the property of respondent, cut and carried off in 1242 B. S., and respondent acknowledges dispossession from 1246.

The moonsiff (Baboo Chunder Kishwur Rai) passed a decree in respondent's favor.

But it has been ruled, by the Sudder Dewanny Adawlut, that such a claim cannot be sustained, unless accompanied by a claim for possession of the land, and respondent must consequently be nonsuited.

IT IS THEREFORE ORDERED :

That the decree of the moonsiff be reversed, and respondent nonsuited, with costs.

THE 13TH MAY 1850.

No. 25 of 1850.

Appeal from the decision of Baboo Ramtaruk Rai, Moonsiff of Lushkerpore, dated 21st December 1849.

Gungapershad Kur, Appellant,

versus

Ramguttee Kur, Respondent.

THIS suit is to cancel a deed of sale of some land, on the ground of non-fulfilment of the terms of purchase, that is to say, the non-payment of 80 rupees of the price of the land payable on respondent's return from his pilgrimage, and pending payment of which the deed of sale had been deposited in trust with Hirdee Ram.

Gungapershad and Chundee Churrin, the purchasers, filed an answer, denying deposit of the deed, and asserting completion of the sale and delivery of possession.

Hirdee Ram filed an answer in support of respondent, stating that on return of the latter from his pilgrimage, appellant and Chundee Churrin brought two bonds executed by respondent in favor of two mahajuns with 5 rupees in cash, and took him to respondent in order that the bonds and cash might be taken in liquidation and the conveyance delivered; that respondent would not assent, as it was night; and that he, the trustee, was persuaded to take the bonds and cash, but that they were returned to appellant and Chundee

Churrun, on respondent's refusal to receive them, on plea of previous payment of the bonds.

Respondent filed a reply, denying appellant's answer, and affirming the truth of Hirdee Ram's statement of the nocturnal visit, without mention of the bonds.

The moonsiff (Baboo Ramtaruk Rai) held the conveyance to have been deposited with Hirdee Ram for completion of the sale, and the sale not completed, and he decreed return of the conveyance to respondent, &c.

Appellant now urges that completion of the purchase is proved; that delivery of possession is attested by respondent's as well as his own witnesses, and corroborated by the fact that the suit preferred against him by respondent, under Act IV. 1840, with concealment of the fact of the sale, had been thrown out by the magistrate, on proof of the deed of sale.

JUDGMENT.

None of the witnesses assert that payment was made at the time the kubalah was executed, nor is the deed stated, saving by one of appellant's witnesses who subsequently gives evidence showing that it was not at his absolute disposal, to have been delivered to the purchasers. On the other hand, there is evidence not only in the depositions of respondent's witnesses, but in those of appellant, showing that the deed was deposited, for completion of the purchase, with Hirdee Ram, whose averment, that appellant attempted to complete the payment, by delivery of two bonds and 5 rupees in cash, has been left uncontradicted: especially with reference, then, to this circumstance, and to the evidence, I have come to the conclusion that the sale was not completed according to its terms; and that the moonsiff's decision is correct. The suit under Act IV. 1840, I may observe, was instituted subsequently to the one now under decision.

IT IS THEREFORE ORDERED:

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 15TH MAY 1850.

No. 11 of 1850.

Appeal from the decision of Moonshee Mahomed Moazum, Moonsiff of Latoo, dated 15th December 1849.

Sooburna Dasee, Appellant,

versus

Joogulram Das, Respondent.

RESPONDENT sued under a bond for rupees 104, with interest, executed by Kaleekapershad Dut, as principal, and Kaleekapershad Das as security.

Kaleekapershad Dut filed an answer, admitting execution of the bond, and averring that its amount was really due from the heirs of Kaleekapershad Das, who had made a dying declaration to this effect, with injunctions to his wife to liquidate it.

Appellant filed an answer, denying all knowledge of the transaction, and pleading that her husband being dead, the claim against his heirs is untenable; and that respondent and Kaleekapershad Dut have colluded to exact money from her.

The moonsiff (Moonshee Mahomed Moazum) decreed that Kaleekapershad Dut should pay 110 rupees, and appellant the balance of the claim, 96 rupees, that each should pay half of respondent's costs and bear their own, and each pay the usual interest on the sum decreed: but he provided that the decree against Kaleekapershad Dut should not be executed till the suit instituted by that individual against respondent should be decided.

Appellant re-denies knowledge of the bond; imputes enmity to the witnesses; urges that the amount is due from Kaleekapershad Dut alone, &c. &c.

Kaleekapershad Dut has filed a petition in support of the moonsiff's decree.

JUDGMENT.

Kaleekapershad Dut has admitted execution of the bond; appellant does not now assert it to be false; and, under these circumstances, respondent appears to me entitled to a decree against both, with costs and interest from the date of suit. This was all that the moonsiff had to dispose of; but, instead of confining himself to the simple question whether the bond in suit was executed, for a legal consideration, by Kaleekapershad Dut and Kaleekapershad Das, he has travelled out of the plain path of his duty, and taken up disputes between the person mentioned as principal in the bond and the heirs of the person mentioned as security, and has passed a discriminating decree, on the assumption that the person declared in the bond to be the security was really the principal, and he has ordered that his decree shall be in part delayed till decision of another suit, for which irregularities and others he must be called to account.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be amended; and that the amount claimed be decreed unconditionally and indiscriminately, as prayed for in the plaint, with interest from the date of suit, and costs in the moonsiff's court, and interest to the date of realization. The costs of appeal in this court will be charged, with interest, to Kaleekapershad Dut; and separate proceedings will be held in regard to the moonsiff.

THE 16TH MAY 1850.

No. 15 of 1850.

Appeal from the decision of Moonshee Nuzeerooddeen Mahomed, Moonsiff of Parkool, dated 14th December 1849.

Gopal Kishen Deb and others, Appellants,

versus

Gourgobind Deb, Respondent.

RESPONDENT sued to recover, with interest, rupees 150, advanced under a farming lease.

Appellants filed an answer pleading, among other matters, that the real lessee was Brijgobind, respondent's brother, a mohurrir of one of the collector's putwarees.

The moonsiff (Moonshee Nuzeerooddeen Mahomed) decreed the claim in part.

Appellants again urge that the real lessee was Brijgobind, with other matter.

JUDGMENT.

Respondent was not present when the advance was made : his brother, the putwaree's mohurrir, is proved by respondent's witnesses, Mahomed Molaim Chowdry and Buddulram Nao, to have been so, and that brother is proved by the investigation of two ameens to have had possession of the property farmed, collecting the rent of it for a year. Under these circumstances, I am satisfied that he is the real lessee, and, consequently, that this suit is instituted by one who is not the real plaintiff, and is therefore illegal.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and respondent non-suited, with costs.

THE 16TH MAY 1850.

No. 22 of 1850.

Appeal from the decision of Moonshee Nuzeerooddeen Mahomed, Moonsiff of Parkool, dated 14th December 1849.

Gourgobind Deb, Appellant,

versus

Gopal Kishen Deb and others, Respondents.

APPELLANT is dissatisfied with the moonsiff's order, disallowing part of his claim ; but as I have, on the appeal of respondents

(No. 15,) decided that appellant's claim is illegal, and nonsuited him,

IT IS ORDERED:

That this appeal be dismissed, with costs.

THE 16TH MAY 1850.

No. 51 of 1850.

Appeal from the decision of Baboo Ramtaruk Rai, Moonsiff of Lushker-poor, dated 31st December 1849.

Dooleechand Kybert, Appellant,

versus

Gourang Kybert and others, Respondents.

RESPONDENTS sued for 300 rupees, damages, because appellant abused them as thieves, dacoits, and teers by caste, when he found that they had forestalled him in purchasing all the dried fish at Teeka Kulla, causing their fellows to cease to associate with persons of their caste, &c.

Appellant denied *in toto* both going to Teeka Kulla and giving abuse; and stated that he went to Tara Kulla, and was buying fish, when respondents came and outbid him, and, on his remonstrating, called him a Mussulman and person without barber and washerman, &c.

Respondents, in their reply, asserted Teeka Kulla and Tara Kulla are one and the same place, with two names.

Appellant, in his rejoinder, averred that respondents will be found on local enquiry to be teers.

The moonsiff (Baboo Ramtaruk Rai) held it proved, that the abuse stated in the plaint had been given; and decreed 28 rupees damages, saddling the parties with half the costs of each.

Appellant now urges, among other matters, that of the six witnesses present three say that the words thieves, dacoits, and teers were used, while the other three speak to hearing the word teer only, and hence he urges that the only word used was teer.

JUDGMENT.

Appellant appears to me to have called respondents teers, knowing that it would offend them, and I think that he should pay 8 rupees' compensation for having indulged in the luxury of thus abusing and annoying them, with costs in proportion.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be amended by the sum decreed being reduced to 8 rupees, with costs in proportion to the amount over decreed.

THE 27TH MAY 1850.

No. 82 of 1850.

Appeal from the decision of Moulvee Waris Alee, Moonsiff of Nubbeegunge, dated 16th April 1850.

Madhooram Das, Appellant,

versus

Moheshram Das and others, Respondents.

RESPONDENTS declare themselves proprietors, and not tenants, of land; and claim the amount of rent and costs illegally exacted from them, through a peada deputed in a summary suit.

Appellant answered, averring respondents tenants of land, the property of himself and Buroda Dasee, on a rent of 8 annas yearly.

The moonsiff (Moulvee Waris Alee) found discrepancies in the evidence of appellant's witnesses, and held it proved that respondents are resident, for the last 20 years, on the land which they occupy, without payment of rent, and he finally decreed against appellant.

Appellant now urges that his defence is proved by the evidence of his witnesses; that a vaqueel was deputed for a local investigation in contravention of Construction No. 901; and that the place of the rent in suit is near the cutcherry of the moonsiff, who was in vain solicited to visit it.

JUDGMENT.

Appellant was bound to justify his summary exaction, but has not done so, for his witnesses have not substantiated the previous payment of 8 annas per annum rent, indeed their evidence is greatly at variance with appellant's statement, for two of the witnesses declare the amount of rent to be double what appellant has stated it. Under these circumstances,

IT IS ORDERED,

That the decree of the moonsiff be affirmed, and the appeal dismissed, with costs.

THE 27TH MAY 1850.

No. 83 of 1850.

Appeal from the decision of Baboo Ramtaruk Rai, Moonsiff of Lushkerpore, dated 17th April 1850.

Sheikh Mahomed Urzan, Appellant,

versus

Sheikh Asaye, Respondent.

RESPONDENT sued to recover, with interest, rupees 4, annas 5, 3 pie, extorted from him on the 12th Assar 1256, through a peada, taken out under Regulation VII. 1799, under pretence of his being

tenant, in 1255, of 2 pao of land in talooka Mahomed Zurreef No. 747, kharija neej Mahomed Zurreef.

Appellant, in answer, averred tenancy, by respondent and others, of the 2 pao of land, his property, bought from Abchand Beebee in 1246; that the rent for 1255 was withheld, and therefore realized under the summary proceedings; that, formerly, respondent seized his, appellant's, ryut for rent of this very land, and was punished by the magistrate; and that the land has ever since been in his own cultivation.

The moonsiff (Bahoo Ramtaruk Rai) held respondent's tenancy of appellant's land, and payment of rent to him before 1255, unproved by appellant's witnesses; and that the summary exaction of rent was therefore illegal; and, on these and other grounds, he decreed the claim.

Appellant now urges that tenancy and payment of rent by respondent are proved, &c.

JUDGMENT.

There is no evidence justifying appellant's exaction, neither previous payment of rent being proved, nor the existence of written agreement to pay being asserted, and the testimony of the two witnesses, who have sworn to oral agreement to pay, being incredible, with reference to the disputes between the parties and the improbability of appellant's statement, that respondent and three others should be tenants of so small a portion as 2 pao of land.

IT IS THEREFORE ORDERED:

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 30TH MAY 1850.

No. 17 of 1849.

Appeal from the decision of Moulvee Saadut Alee, Principal Sudder Ameen, dated 4th September 1849.

Burro Duloe, Appellant,

versus

Sobasingh and others, Respondents.

APPELLANT sued for the value of property seized and sold.

Sobasingh admitted the sale of part of the property, for a smaller sum than that stated by appellant.

First. On the ground that Run Moonsiff, appellant's father, to whom the property belonged, gave him, when dying, leave to sell, under a taleeka, or schedule, which he caused to be made out, in satisfaction of this defendant's claim for 600 rupees; *secondly*, on

the ground that he caused the body of Run Moonsiff to be burnt, and thereby became his heir: and *thirdly*, on the ground that the sister's son is the heir among Kossiahs.

These being the main statements of the parties, the questions for consideration were

First. To whom the property sold belonged; and if to appellant, what was its value, and was it forcibly seized and sold, as declared in the plaint?

Secondly. If it belonged to Run Moonsiff, what person caused his corpse to be burnt, and performed the obsequies of the deceased? and is the person who causes the corpse of another to be burnt and performs the obsequies entitled as heir, according to the usages of the Kossiahs?

Thirdly. If Run Moonsiff were owner, did he authorize the sale?

Fourthly. If it belonged to Run Moonsiff, should appellant, the son, be excluded from inheritance of it by there being a sister's son?

Instead of laying down these points briefly, distinctly, and unmixed with foreign matter, the principal sudder ameen has carelessly copied the statements of the parties into his proceeding under Section 10, Regulation XXVI. 1814, appointing investigation of points some of which are not disputed and others irrelevant, and omitting questions which imperatively demand enquiry. Under these circumstances, I deem it my duty, especially with reference to the decision of the Sudder Dewanny Adawlut in the appeal of Kowur Rooder Singh, to remand the suit for investigation.

IT IS THEREFORE ORDERED,

That the decree of the principal sudder ameen be reversed, and the suit remanded for the purpose indicated, and referred to the recently appointed sudder ameen. The price of the stamp on the petition of appeal will be refunded, and the sudder ameen will pass orders in regard to the remaining costs of appeal.

THE 31ST MAY 1850.

No. 70 of 1850.

Appeal from the decision of Baboo Sharoda Pershad, Moonsiff of Ajmeree-gunge, dated 18th February 1850.

Brijkishwur Rai, Appellant,

versus

Muddun Mohun Deb, Respondent.

THIS suit is under a bond. The bond is admitted, but it is averred by respondent, to have been deposited in trust with Kirteenarain Shah, who was to have given it up to respondent on the signature of Ramkishun Biswas, respondent's partner, being affixed to the deed of sale of some land, a consummation which the evidence of Kirteenarain shows to have never taken place.

The moonsiff (Baboo Sharoda Pershad) has dismissed the claim, on the ground of the sum represented in the bond having constituted part of the price of the land bought by appellant from respondent.

But from respondent's own answer and the evidence of his witness Kirteenarain, I find that one of the conditions under which the bond was to be cancelled has not been fulfilled: and, as the circumstances under which respondent alleges the deposit to have taken place indicate that the fulfilment of the condition, that is to say, causing the signature of Ramkishun to be affixed to the deed of sale, rested with respondent, I am of opinion that a decree should pass, as prayed for by appellant, respondents being, of course, at liberty to prefer any claim which he may hold himself entitled to advance in connection with the price of the land.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the claim decreed, with costs.

THE 31ST MAY 1850.

No. 87 of 1850.

Appeal from the decision of Baboo Ramtaruck Rai, Moonsiff of Lushker-poor, dated 26th April 1850.

Sheikh Nagur, Appellant,

versus

Deeanutram Shah, Respondent.

THIS suit is under a bond. The land is said to have been forcibly taken by Oochub Ram and Pagul Ram, in appellant's name, because respondent quitted their bazar for the rival bazar recently established, of which oppression respondent complained to the magistrate.

The moonsiff (Baboo Ramtaruk Rai) held the bond to have been extorted, and dismissed the claim.

Appellant urges that his claim is established, and that he has no connection with Oochub Ram, &c.

JUDGMEET.

The evidence of Jyram, who gave evidence in 1848, on the part of Sheikh Nagur, then declared appellant to be surbarrakar of Oochub Ram and Pagul Ram, Oochub Ram's witnesses in another case, in December 1849, that is to say, after the date of the bond in suit, made a similar statement, so that it is clear that the connection, which appellant repudiates with Oochub Ram, is true; and, advert- ing to this fact and the circumstances of the case, it is impossible for me to place any faith in this claim, which seems to me preferred only to counteract the complaint to the magistrate.

IT IS THEREFORE ORDERED:

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 31ST MAY 1850.

No. 88 of 1850.

Appeal from the decision of Baboo Ramtaruk Rai, Moonsiff of Lushkerpore, dated 26th April 1850.

Sheikh Nagur, Appellant,

versus

Rammohun, Respondent.

THE circumstances of this suit are similar to those of the case disposed of under appeal No. 87, on the grounds declared in which

IT IS ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

ZILLAH TIRHOOT.

PRESENT: THE HONORABLE ROBERT FORBES, JUDGE.

THE 16TH MAY 1850.

No. 1 of 1849.

Regular Appeal from a decision of Moulee Niamut Allee Khan, first Principal Sudder Ameen, dated 26th December 1848.

Rampershad Singh, (one of four Defendants,) Appellant,

versus

Chettoo Raee and Goodree Raee, (Plaintiffs,) Respondents.

THIS was a suit instituted to cancel, as collusive, a bill of sale, dated 10th December 1834, of mouzah Shunkerpore Suhtah *alias* Purboonarainpore, and other property in pergunnah Bissareh, and to reverse a proceeding of the judge, dated the 12th March 1847, action being laid at Sicca rupees 1950 (the price entered in the bill of sale) or Company's rupees 2080.

The plaintiffs had obtained a decree on the 19th June 1843 in a suit to recover on bond against three of the defendants, Ruggoobeer, Bungsee, and Chuttawur Singh, (not present in appeal,) and, in executing their decree, attached the above property as belonging to their debtors with a view to its being sold; on which the appealing defendant objected, on the ground that the three debtors above-named, two of them, it appears, being his brothers-in-law, had sold him the above property by deed of sale dated as above, and his objection being admitted by the judge on the 12th March 1847, the property was released from sale, to cancel which bill of sale and proceeding this action is brought. It is also urged that had the sale been a *bonâ fide* one, why did the alleged sellers present a petition of objection to the collector in 1841?

The defendant Rampershad Singh pleaded, first, the statute of limitation with reference to the date of the deed of sale, which latter was executed eleven months and twenty-seven days before the bond on which the decree was founded; and secondly, denying the existence of any relationship between himself and sellers, urges that it is not imperatively necessary to register a kuballa on the very day of its execution; and regarding the petition presented by the sellers to the collector, there was no need for his coming forward as objector.

The other defendants did not answer.

The principal sudder ameen gave the plaintiffs a decree, the sale being in his opinion proved to be collusive both by the fact of relationship between the buyer and sellers being established by evidence, and because the bill of sale had not been registered until after the lapse of more than a year from the date of its alleged execution, the bond too on which the decree obtained by the plaintiffs had been given, bore a date prior to that of the registry, from which it was clear that a date antecedent to that in the bond had been inserted in the kuballa on an old stamp. It also appears that in 1841, the share of one putteedar, Jugroop Singh, as security, was about to be sold by the collector, on which the three debtors, Ruggobeer Singh and others, came forward and laid claim to their shares, which would have been absurd if the property had been really sold in 1834. Moreover, the plaintiffs filed three original thika pottahs and six fariqkhuttees, or acquittances, plainly showing that the three debtors had been in possession subsequent to the alleged sale, which could not have been the case had they really disposed of the property before.

The single defendant in appeal pleads that, even allowing the statement of the plaintiffs of his being related to the two defendants, Bungsee and Chuttawur Singh, to be true, that does not make him out any relation to the third, Ruggobeer Singh, and the pottahs and fariqkhuttees and petition to the collector have all been collusively got up between the plaintiffs as decreeholders and the sellers.

JUDGMENT.

I see no ground whatever for interfering with the decision of the principal sudder ameen, which I accordingly affirm as just and proper, and dismiss the appeal, with costs payable by the appellant.

THE 16TH MAY 1850.

No. 257 of 1849.

Regular Appeal from a decision of Munneerooddeen Hossein, Moonsiff of Muhwa, dated 14th June 1849.

Ramdyal Mahtoo, (Plaintiff,) Appellant,

versus

Kashee Roy and four others, (Defendants,) Respondents.

THE plaintiff brought this action to recover Company's rupees 30 as the value of two bullocks, alleged to have been forcibly taken away from him by the defendants, and also to reverse a proceeding of the foudarry court of the 6th January 1849, in which court he (plaintiff) had unsuccessfully prosecuted the single defendant Kashee Roy only.

The latter person, as defendant, denies having taken the bullocks by force, and pleads that having lent the plaintiff 25 rupees the

latter gave him a bond, and that, agreeably to adjustment effected by and in presence of arbitrators, the plaintiff made over to him the two bullocks at a valuation of 20 rupees and a young mare valued at 10 rupees, in payment of the debt, and returned him (defendant) his bond.

The other four defendants pleaded, in answer, that they have nothing whatever to do with the case, and that the plaintiff has only sued them now which he did not do in the foudarry case.

The suit was dismissed by the moonsiff, because he found the statements of the plaintiff's witnesses to be conflicting, and that, as the case had been disposed of in the foudarry court after hearing evidence on both sides, the plaintiff's suing to set aside that decision was improper. Besides which, the use of force by the defendant is not established by the proceeding of the foudarry court, but that the bullocks had been pledged in payment of a debt.

The grounds of appeal are that if, as averred by the defendant, there had really been an arbitration, there would have been the usual agreement and written decision of arbitrators. In addition to which the defendant has neither produced any bond nor witnesses to one. How then can the court implicitly believe that one was really executed?

JUDGMENT.

The moonsiff's investigation of this case is very imperfect and superficial, and his decision is therefore hasty and unsatisfactory. The preponderating proof is in favor of the plaintiff whose suit has been dismissed, and no evidence was taken in support of the pleas urged by the defendants, in regard to a loan and the alleged pledging of the animals said to have been forcibly carried off and the arbitration.

Reversing the decision of the moonsiff, I remand the suit for re-investigation with advertence to the above remarks, and with the issue of the customary order for the refund of stamp duty.

THE 17TH MAY 1850.

No. 44 of 1849.

Regular Appeal from a decision of Moulvee Mohummud Mohamid, second Principal Sudder Ameen, dated 22nd May 1849.

Hirdenurain, (Plaintiff,) Appellant,

versus

Musst. Jumna Oojain and Mustt. Hoolasbuttec, (Defendants,) Respondents.

THIS was a suit for the recovery of Company's rupees 1163-5-6, principal and interest of a loan on a bond alleged to have been executed by the respondents (defendants,) on the 18th Jeit 1255 F. S., on an adjustment of accounts relating to former monetary transac-

tions between the parties, and the borrowers being women and purdahnusheens, they had authorized Sreedhur Surosuttee, who is the husband of Musst. Hoolasbuttee and the son-in-law of the other defendant, to sign the bond for them, and four others to witness its execution on their behalf.

Neither of the defendants appeared to defend the suit either in the court of first instance or appeal.

The principal sudder ameen dismissed the suit for several reasons, the chief of which are these.

The impression of the seal on the bond is illegible, and the witnesses were not able to say how much money appeared due on ledger accounts and how much on former bonds, and he discredited the statement of the witnesses who deposed that the mussamuts had authorized them to sign for them from behind a purdah. It did not appear that the party who signed for the mussamuts had any authority to do so, and either a general or special power was indispensable in such a case. Furthermore, two of the witnesses deposed that they had received verbal instructions from the mussamuts to attest the bond, notwithstanding which their names were also in a "chittee," or note, which had been sent into Mozufferpore, directing others of the witnesses who had not received verbal instructions to be present and attest the deed, the reason or necessity for which is not apparent; moreover, the bond ought to have been, but was not, registered, and the suit does not include, as it ought to have done, the party who signed and sealed for the mussamuts.

In appeal, the plaintiff contends that one proof of his suit being just is the fact of the defendants not having defended it, that Sreedhur Surosuttee was the man of business of the mussamuts, and signed and sealed and acted in the whole transaction on their behalf, two witnesses having deposed to their having received the mussamuts' verbal instructions to attest the bond and the other two by "chittee."

JUDGMENT.

I think the principal sudder ameen was altogether wrong in throwing out this case. The defendants neither answered nor appeared in the court of first instance or in appeal; and the execution of the bond being proved by the testimony of four witnesses, the principal sudder ameen ought to have known that the registering of bonds is not imperatively required by any regulation.

Regarding the doubt expressed by the principal sudder ameen as to the authenticity of the mussamuts' seal from its impression not being legible, impressions exactly similar are found on several vakalutnamahs executed by the mussamuts, either as plaintiffs or defendants, and filed in other cases, which have been inspected in this court, all such papers being signed for the mussamuts by the same Sreedhur Surosuttee, the husband of the defendant, Musst. Hoolasbuttee Oojain.

The khata-buhees too of the plaintiff for the years 1254 and 1255 F. S. having been called for and produced in this court, an entry is found in the latter of the balance remaining due from the mussamuts on settlement of accounts on the date on which the bond was given, mention being also made in the same place of the actual execution of such bond, while from various entries in the khata of the former year it appears that the mussamuts had money dealings with the plaintiff's cootee and always through the medium of Sreedhur Surosuttee, and the plaintiff's own gomashtha, Radeh Lall, attests the khata-buhees in respect to both points. The fact too of the mussamuts' banking with the plaintiff's cootee is proved by dakhilas for Government revenue, which the latter has filed, showing that the revenue for which they are acknowledgments were paid in by the cootee for the mussamuts, and further proof of Sreedhur Surosuttee's being employed to act for and on behalf of the mussamuts is afforded by a chittee on stamped paper, dated 4th Poos 1254 F. S., bearing the mussamuts' seal, and addressed to the mahajun when she first opened an account with him.

For these reasons, I consider that the plaintiff's claim is established, and, accordingly, reversing the decision of the principal sudder ameen, I decree for the appellant, with costs chargeable to the respondents.

THE 17TH MAY 1850.

No. 265 of 1849.

Regular Appeal from a decision of Pundit Dataram, Moonsiff of Teigrah, dated 4th June 1849.

Brijlall Chowdry, (Defendant,) Appellant,

versus

Mahadeo Chowdry, (Plaintiff,) Respondent.

IN this suit, which was instituted by the plaintiff to recover from the defendant Company's rupees 106-3-3, principal and interest of a loan on bond, bearing date the 24th Poos 1254 Fuslee, the defendant denies the claim *in toto*, or that he ever executed any bond, and pleads that the case had been got up against him through enmity. But the moonsiff, finding the execution of the bond proved as required by Section 15, Regulation III. 1793, by the testimony of two witnesses, one of whom was the writer of the bond, and both deposing to the payment of the sum borrowed in their presence, gave the plaintiff a decree.

All that is brought forward in appeal is, that two witnesses out of three named in the bond having deposed to their knowing nothing of the matter, the evidence of the single remaining witness and of the writer cannot be sufficient; besides which the plaintiff's witnesses are his own relatives and their testimony is contradictory.

JUDGMENT.

Concurring in the justice and propriety of the moonsiff's decision, which is not impugned by any thing brought forward in appeal, I uphold the same, and reject the appeal without summoning the respondent.

THE 17TH MAY 1850.

No. 267 of 1850.

Regular Appeal from a decision of Moulvee Muneerooddeen Hossein, Moonsiff of Muhwa, dated 14th June 1849.

Kashee Rawut, (Defendant,) Appellant,

versus

Shaikh Moula Buksh, (Plaintiff,) Respondent.

THE plaintiff, as malik, sued to recover from the defendant, as kashtkar, the sum of Company's rupees 28-15, principal and interest of arrear, of rent of 1 beegah of land at the rate of 10 rupees per beegah, in mouzah Akburpore, pergunnah Bissareh, on the ground that, notwithstanding his (plaintiff's) having issued the usual notice required by Regulation V. 1812, the defendant cultivated the land without obtaining a pottah.

The defendant denies having any land in his cultivation from the plaintiff, but pleads that he cultivates 17 cottahs of land as shikmee under Gungun Rawut thikadar, the rent for which he regularly paid to the latter while alive and after his death to Sheotuhul Rawut, his younger brother, the truth of which statement may be ascertained by enquiry among the neighbouring ryots, this action being brought to establish a higher rate of rent than has been heretofore paid.

Sheotuhul Rawut also presented a petition in support of the defendant's allegations.

The suit was decreed by the moonsiff in plaintiff's favor, on the evidence of the putwarree of the latter, his jumma-wasil-bakee, and the testimony of other witnesses, but without the enquiry prayed for by the defendant, among the neighbouring ryots, on which account the defendant appeals from his decision.

JUDGMENT.

There were two points in this case for adjudication, neither of which has been satisfactorily determined in the lower court; first, whether the defendant really had land of the plaintiffs, and, if so, how much, to cultivate; and secondly, what rate of rent is paid for similar land in the vicinity. Enquiry among the neighboring ryots would have set at rest both points.

The case must be, and is accordingly remanded for re-trial to the moonsiff, with order passed for return of institution fee.

THE 22ND MAY 1850.

No. 51 of 1849.

Regular Appeal from a decision of Moonshee Sheikh Derasut Allee, Sudder Ameen of Muzufferpore, dated 16th July 1849.

Sheikh Luteeff Ahmud, (Defendant,) Appellant,

versus

Musst. Oozeeru 1, (Plaintiff,) Respondent.

THIS was an action to recover Company's rupees 473-2-9, principal and interest of peshgee, the plaintiff stating that her husband, Sheikh Kurreemooddeen, took a thika farm of the 2 anna share of mouzah Islampore, pergunnah Bissareh, from the defendant, the latter receiving the above sum in advance, but the plaintiff's husband was dispossessed pending the duration of the lease, owing to the property being attached and settlement made by Government with another party.

The answer of the defendant is a denial of the execution of any thika pottah, pleading likewise that, if plaintiff's statement was correct, she would have objected at the time of attachment and settlement. Besides which, 12 years have elapsed since the date of attachment to that of suing.

The sudder ameen was of opinion that the execution of the thika lease was satisfactorily established by the testimony of the witnesses who subscribed it, the evidence of others also establishing the fact of the plaintiff's possession prior to the attachment, and he found that, computing from the date of the roobakaree of settlement, the plaintiff's suit is within 12 years. He accordingly decreed the suit in favor of the plaintiff.

The ground of appeal is that plaintiff's dispossession should be computed from the date of the attachment of the property by Government, and not from the date of settlement.

JUDGMENT.

All that is involved in this appeal is from what date the respondent (plaintiff) was dispossessed, and whether, with reference to that date, she has now sued within the time prescribed by law.

The settlement roobakaree bears date the 30th October 1835, or 26th Kartick 1243 F. S., and it is in evidence that the plaintiff was in possession till Poos 1243, or January 1836, and as she filed her plaint on the 31st August 1847, computing from either of the above dates, she is within time. Dismissing therefore the appeal, I affirm the decision of the sudder ameen without notice to the respondent.

THE 22ND MAY 1850.

No. 79 of 1849.

*Regular Appeal from a decision of Moulvee Mohummud Mohamid, second
Principal Sudder Ameen, dated 21st July 1849.*

Jyram Singh, (Plaintiff,) Appellant,

versus

Jhootee Singh and others, (Defendants,) Respondents.

THE plaintiff sued the three defendants, who are brothers, to recover from them the sum of Company's rupees 1546-11-8, principal and interest of a loan, alleged to have been made to their father, Sheodyal Singh, who executed a bond on the 13th Bysack 1244 F. S., promising payment by the poornomassee of Sawun of the same year. But the defendants denied that their father had ever borrowed the money or given the bond, they also pleaded that the plaint contained no reason for the delay in suing, notwithstanding the lapse of 12 years, nor did it say any thing of payment having been demanded.

The principal sudder ameen dismissed the suit, because, of five witnesses who subscribed the bond, three, and among them the alleged writer of the deed denied any knowledge or their attestation of it, and of the other two, though they attested the bond, one of them could not read so as to identify the bond, and therefore the testimony of the remaining single witness could not suffice. In regard, too, to the testimony of others who depose to the plaintiff having importuned for payment, and of those who speak to their knowledge of overtures of compromise, their evidence cannot be considered to the purpose, since the execution of the original bond itself has not been proved.

In appeal, the plaintiff urges that, before the evidence of the three witnesses, who deposed to their knowing nothing, had been taken down, he petitioned the principal sudder ameen, praying that as they were in league with his opponents their depositions might not be taken. On this, the principal sudder ameen passed an order that their evidence should be taken, but that the plaintiff might afterwards disprove it. He accordingly petitioned to the effect that the writer of the bond (by name Seetaram) had been in his (plaintiff's) employ as putwarree, but been dismissed, and that, in three missils, which he particularized, papers would be found bearing the above witnesses' signatures, which he prayed might be compared with that in the bond and which the witness had denied. To this petition, however, the principal sudder ameen did not accede; moreover, with reference to Section 15, Regulation III. 1793, two witnesses have proved the execution of the bond, and several persons have testified to his having asked for payment, and that a compromise was on the tapis.

JUDGMENT.

I consider the principal sudder ameen's investigation of this case incomplete and insufficient. Having himself passed an order that the plaintiff (appellant) would be at liberty to disprove the evidence of three of the plaintiff's witnesses, whose evidence the principal sudder ameen recorded contrary to the expressed wish of the plaintiff himself, the latter objecting, that they (those witnesses) had collusively sided with his opponents, and who accordingly deposed that they knew nothing, the principal sudder ameen ought not to have closed the case without giving the plaintiff the opportunity of rebutting their evidence agreeably to the prayer of his petitions, one presented before, and the other after, their depositions had been taken.

The principal sudder ameen ought also to have called for and examined the missils specified by the plaintiff, to prove the handwriting of the writer of the bond Seetaram, who denies having written it, or signed his name in attestation either for himself or any other.

I remand the case to the principal sudder ameen's court for re-trial with reference to these remarks, and with the usual order for the refund of the value of stamp paper.

PRESENT: JOHN FRENCH, ESQ., ADDITIONAL JUDGE.

THE 4TH MAY 1850.

No. 313.

Regular Appeal from a decision passed by Pundit Data Ram, Moonsiff of Teigrah and Beegoo Surai, dated 3d April 1848.

Gondeer Mhatoon, (Defendant,) Appellant,

versus

Tulleiwur Raee, (Plaintiff,) Respondent.

THE action of this suit is laid at Company's rupees 4-13-6, being the principal and interest of arrears of revenue, due for the years 1253 and 1254 Fuslee, on the cultivation of 5 beegahs, 9 biswas, 3 dhoors of land, at the rates of rupees 2 and rupees 1-12 sayer, at 2 annas 6 pie on the produce of moowah according to putwarree's accounts of Nursinghpore Soogund, pergunnah Mulkee.

Purport of the plaint is: that Rugnauth Sahee, the proprietor of the abovementioned village, leased the plaintiff 8 annas share of the whole 16 annas of the village from 1253 to 1259 Fuslee, on an advance of rupees 2996, of which the plaintiff is still in possession; the defendant being a cultivator of the quantity of land above stated, and not paying the plaintiff his quota of rent, he therefore sues the defendant according to the putwarree's accounts.

The defendant pleads: he does not cultivate the full quantity of land nor at the high rates specified in the plaint, and for every description of rent payable by him for the years 1253 and 1254 Fuslee was rupees 8-9, and that he had paid the plaintiff rupees 4-4-6, on account of the two years sued for. The plaintiff in measuring his cultivation made use of a rod of only 5 cubits, in lieu of the customary length $5\frac{1}{2}$ and $5\frac{3}{4}$ cubits, and assuming higher rates for the different kinds of cultivation, hence the increase of his demand.

Hunnooman Dutt and three others, proprietors of the other 8 annas share, filed a third party petition, urged: leases to the ryots and their counterpart of those deeds are written out in the names of all the proprietors jointly, and not separately, stipulating therein, for cultivation exceeding that specified in the lease, to be paid for at the rate in the deed. There are two kinds of measuring rods, the one of $5\frac{3}{4}$ cubits is made use of in measurement of land that has been cultivated for spring crops, and the other of $5\frac{1}{2}$ cubits for cotton and other kinds of cultivation. The defendants have paid to them their portion of the rent for 1253 Fuslee, according to the quantity of cultivation and rates specified in the plaint, and by measurement effected in 1253 Fuslee.

The moonsiff decreed in favor of the plaintiff, on the grounds of the evidence of plaintiff's witnesses, and the putwarree, who filed the wasil-bakee, and the quantity of cultivation having been ascertained by the investigation and measurement made by the ameen deputed to the spot, prove the plaint.

The defendant appealed from this decision, urging: the rod used by the ameen was of the sikundree cubit, and not that used in measuring lands of the pergunnah; and the measurement of the ameen having been effected when he was not present, it cannot be admissible. The witnesses adduced by the plaintiff are his dependants; hence their evidence should not be depended upon.

COURT.

The objections urged by the appellant are groundless, for the rods with which the lands were measured were of the customary length as used in the pergunnah, proved by the evidence of witnesses and report of the ameen. With respect to the measurement having taken place, when the appellant was not present, was from his own contumacy in not having attended the ameen to see it carried into effect, even after three proclamations had been issued for his own attendance for that purpose. It is evident the appeal has been preferred merely to delay payment of the rent justly due. Therefore, ordered, the decision of the moonsiff be affirmed, and the appeal dismissed with costs chargeable to appellant.

THE 4TH MAY 1850.

No. 316.

*Regular Appeal from a decision passed by Kazee Mohummud Allum,
Moonsiff of Coylee, dated 8th April 1848.*

Nauthbuksh, (Plaintiff,) Appellant,

versus

Gheenah Rao and Mujnoo Lall, Naeb Putwarree, (Defendants,) Respondents.

THE amount of action of this suit is laid at Company's rupees 23-7, being the principal and interest of a receipt given, acknowledging the amount of decree of a summary suit, dated 10th of March 1846.

Purport of the plaint is: that Mujnoo Lall, one of the defendants, as naeb of Jubbo Loll, putwarree of village Mudkole Nawarah Mudeiwah, pergunnah Bubrah, zillah Toorkee, being in the employ of the indigo factory at Bulsour, to recover arrears of rent of the 6 annas instalment of 1252 Fuslee, due from the other defendant,

Gheenah Raee, who is a cultivator in the said village, caused an attachment of his crop; the plaintiff having become surety for Gheenah Raee, he thereby obtained a release of his crop, and preferred his objection to the attachment to the collector, who, on investigation of the matter, decreed in favor of Mujnoo Raee, the defendant. On the execution of the decree, the plaintiff was seized, who thereon paid the sum of rupees 18-13 to Mujnoo Raee, taking a receipt from him for the amount. As Gheenah Raee, the principal defendant, will not repay the money, the plaintiff therefore sues both.

The defendants allowed the case to go by default.

The moonsiff dismissed the suit, on the ground: the plaintiff merely filed the receipt and adduced the two subscribing witnesses thereon; the plaintiff's attorney was questioned whether he had any further documents to file; he answered his client had not given him any other documents, and that he wished the investigation to proceed on the receipt filed. Without copy of the security, the summary decision of the attachment case, and the receipt filed, and the evidence of witnesses thereof, alone are not sufficient proof of the case.

From this decision the plaintiff appealed, urging: the defendants allowed the case to go by default. The receipt filed, and evidence of witnesses proved his suit. The filing of the papers required by the moonsiff is not necessary; if the case had been postponed for them, copies could have been obtained and filed.

COURT.

The decision of the moonsiff is based on equitable principles: for without the papers required therein, the just claim of the plaintiff is not established, and carries with it a doubt whether or not the suit is a collusion between the plaintiff and the granter of the receipt, to exact the money unjustly from Gheenah Raee; but as the appellant seems willing to file the papers for the full elucidation of his case, and the moonsiff not having called for them to be filed previously to deciding the suit, shows the investigation was incomplete. Therefore, ordered, the decision of the moonsiff be reversed, and the case be returned for re-investigation on the point above indicated. The amount of stamp of appeal plaint be returned to appellant.

THE 6TH MAY 1850.

No. 317.

Regular Appeal from a decision passed by Pundit Data Ram, Moonsiff of Teigrah and Beegoo Surai, dated 6th April 1848.

Sheikh Furzund Ali and nineteen others, (Plaintiffs,) Appellants,

versus

Syud Abdoollah, Musst. Nughenah, and twenty others, (Defendants,) Respondents.

THE amount of action of this suit is laid at Company's rupees 103-14, being three times the amount of the annual revenue of the property disputed for. And the suit is instituted for the cancelment of a portion of the deed of auction purchase, dated 16th of Assin 1240 Fuslee, the erasement from the records of the Monghyr collectorate of the names of the purchasers, and in their lieu the substitution of the names of the plaintiffs, to the share of 13 gundahs, 1 cowrie, 5 dunts of village Futteipore Thuthye, and 1 anna, 1 cowrie, 4 dunts of village Naraenpore Ekdurah within 6 annas of each of those villages, pergunnah Mulkee.

The plaint sets forth: that 10 annas share in each of the villages Futteipore, Thuthye, and Naraenpore Ekdurah, principals and dependencies, is the property of the plaintiffs; in proof thereof the decision of the former additional judge, Mr. George Gough, dated 27th September 1836, the decision of Abdool Wahid Khan, principal sudder ameen, dated 24th of February 1837, and the koorsee-namah (or genealogical table) are forthcoming. The other 6 annas portion of those villages is the property of other sharers; of which Sheikh Kumman and other sharers sold half an anna portion to Sheikh Rujhab Ali and others. Sheikh Goolam Ali, the original ancestor of the plaintiffs, sued for the right of pre-emption thereof and obtained a decree, of which the plaintiffs are still in possession 13 gundahs 1 cowrie, 5 dunts portion of village Futteipore Thuthye, and 1 anna, 1 cowrie, 4 dunts portion of village Naraenpore Ekdurah were sold to Moonshee Immambuksh in the name of his wife, Musst. Nughenah, by Sheikh Meerun and others; whose property afterwards, that is, of Sheikh Meerun, Sheikh Badoolah, Ateekoolah, Sheik Choolahye, Chamun *alias* Sheikh Hoomur, and Dunnoo, was, in satisfaction of decree in favor of Hunman Dutt, sold at action and purchased by Musst. Nughenah and her husband, Moonshee Immambuksh in the name of Syud Abdoollah, a servant of theirs. The shares of those persons, the decree debtors, had been, previously to the auction sale, sold to the moonshee and his wife, who were the auction purchasers, by which auction purchase they had nothing to be put in possession of; but Musst. Nughenah, the mother of Musst. Furkoondah and Syud Abdoollah, under the assertion of being in possession of the whole 16 annas of both villages, instituted sundry

suits, to recover arrears of rent, on Sheikh Sonoo and others, in which cases the plaintiffs filed third party petitions, whereon an order was passed for Musst. Nughenah to sue to establish her proprietary right, which she has not done. Afterwards Roshen Ali, a servant of Kadeem Ali and Musst. Wozeerun, the lessees on the part of the abovementioned female, sued the plaintiffs and others, for the produce of thatching grass. The sudder ameen of Monghyr passed a decree in favor of the lessees against the present plaintiffs, by which decree their (the present plaintiffs' property) has been wholly wrested from them. Therefore, with a view to preserve their property, they instituted this suit, and pray that the private bills of sale of Musst. Nughenah and the deed of auction sale may be called for to be compared with the koorseenamah to ascertain whose portions were sold and what were their respective shares.

Musst. Furkoondah, defendant, alleged that prior to the private purchases and auction purchase a detailed list of shares appertaining to all the proprietors was filed in court, in the case of Sheikh Goolam Ali, (the ancestor of Furzund Ali,) plaintiff, *versus* Sheikh Mahomed Ameer and others, defendants; agreeably to that detailed list of shares, Immambuksh, her father, purchased in the name of his wife, Beebee Nughenah, 8 annas share of Naraenpore Ekdurah, and a share of 7 annas $2\frac{1}{2}$ pie of Futteipore Thuthye; and afterwards, of the remaining 8 annas of Naraenpore Ekdurah, 7 annas $2\frac{1}{2}$ pie and 5 annas within 8 annas $1\frac{1}{2}$ pie of Futteipore Thuthye were purchased at auction by Syud Abdoollah, from whom they were purchased by her, and the $\frac{1}{2}$ anna that appertained to Furzund Ali has also been sold at auction.

Asghur Ali and eleven other defendants filed answer in corroboration of the plaintiff's plaint.

Sheikh Rhajub Ali and Sheikh Deehanut Ali filed a third party petition, urging: both the villages under litigation were nankar of Lalla Khamanjeet Raee. In 1224 Fuslee were attached and settlement of it effected with Sheikh Bindoo, Kureem Ali, Sheikh Meerun, and others. The heirs of Sheikh Kureem Ali, that is, Beebee Chaheetah and others, sold their share of 2 annas 3 pie of village Futteipore Thuthye and one anna of village Naraenpore Ekdurah, and half anna of village Futteipore Thuthye by Sheikh Khamun; these three portions were sold to him, Sheikh Rhajub Ali. The half anna portion was sued for under a pre-emption suit by Sheikh Goolam Ali, who obtained a decree for the same. And afterwards Sheikh Rhajub Ali sold 1 anna 6 pie of Futteipore Thuthye and one anna of Naraenpore Ekdurah to Beebee Nughenah and $3\frac{1}{2}$ pie is still in the possession of Rhajub Ali. Sheikh Kumman, beside his former sale, sold 3 pie of Futteipore Thuthye to Beebee Nughenah; one anna of Futteipore Thuthye still remains in the possession of his son, Sheikh Deehanut Ali.

The remaining defendants failed to file any answer to plaint.

The moonsiff dismissed the case, on the grounds: from the inspection of a decision of the additional judge, dated 29th July 1844, an appeal from the sudder ameen of Monghyr by Musst. Furkoondah, appellant, plaintiff, *versus* Musst. Nughenah, Sheikh Furzund Ali, and others, respondents, defendants, in which case it appears the shares of the respective vendors of both villages are specified, and what was stated in that case by Musst. Furkoondah was denied, as well as the suit by Sheikh Furzund Ali, but a decree was passed in favor of Musst. Furkoondah, which decision is established, no special appeal having been preferred against it. The plaintiffs state they sue in virtue of the koorseenamah on the circumstance regarding the auction sale, which was not mentioned in the former case. The plaintiffs, having now fretted and twisted the matter, deceitfully wish to have that case again investigated in this suit.

From the above decision the plaintiffs appealed: alleging the moonsiff had, contrary to the proof on the face of the suit, decided the case. For the proof of our suit are the deed of auction sale, and the bills of sale of private purchase, and other papers in the roll of the case in which Sheikh Sonoo was special appellant *versus* Sheikh Abdoollah respondent, investigated by Mr. George Gough, the former additional judge, hoping that case and the case decided by the present additional judge, dated 29th July 1844, may be called for from the record office and justice given.

COURT.

To cancel an auction sale or any portion thereof after an elapse of more than 15 years is not in the power of the courts to effect. And from the original plaint, as well as from the appeal plaint, it is apparent the appellants are desirous to revive the investigation of the appeal cases Nos. 12336 and 12337, decided by this court under date 29th of July 1844, with a view that some portion thereof may possibly be amended in their favor. The appellants were a party in those cases: if wronged by that decision, they should have applied for a review of judgment, setting forth the point or points in which they considered themselves injured, and the judgment erroneous, or have preferred a special appeal from that decision to the Sudder Dewanny Adawlut. Neither of these applications having been made; and it appearing from the perusal of the papers of this case that the reasons assigned by the moonsiff in his decision for the dismissal of the case to be correct and just, it must be upheld. Therefore, ordered, the decision of the moonsiff be affirmed, and the appeal be dismissed, with costs of both courts chargeable to the appellants.

THE 7TH MAY 1850.

No. 320.

Regular Appeal from a decision passed by Pundit Data Ram, Moonsiff of Teigrah and Beegoo Surai, dated 14th April 1848.

Roop Singh Raee, Pulwan Raee, and Girdaree Raee, (Defendants,) Appellants,

versus

Huronee Ram, (Plaintiff,) Respondent.

THE amount of action is for Company's rupees 20-8-3, being the amount of decree of a summary suit by the collector of Monghyr, dated 27th April 1847, for the reversal of which this suit is instituted.

The plaint sets forth: the whole village Mirzapore Ballee, pergunnah Mulkee, is the property of the plaintiff under two bills of sale of 8 annas each. In the first bill of sale there are shares of other villages also mentioned, it is dated 12th August 1839, corresponding with 27th of Sawun 1246 Fuslee, executed by the vendor, Baboo Ajoodepurshad Naraen Singh. The other bill of sale of 8 annas of this village is dated 19th February 1844, corresponding with 15th Phalgun 1251 Fuslee, executed by Girdaree Raee, by those bills of sale he is in possession of the whole village. The three defendants are joint cultivators in the village to the extent of 18 beegahs, 18 biswas, 12 dhoors, have paid up their rent to 1252 Fuslee, and taken receipts for the same; not having paid for 1253 Fuslee, and it appearing rupees 20-8-3 were due from them for that year, he sued them in a summary suit before the collector of Monghyr, in which case they acknowledge the cultivation; but that they had paid the rent to Bugwuntpurshad Naraen Singh, the cultivation being within that person's koodkasht cultivation; and Bugwuntpurshad Naraen filed a third party petition in that lease in corroboration of the defendants' defence. The collector having made some enquiry in the office regarding the mutation of his, the plaintiff's, name, and finding it had been directed to be postponed by the judge of Chupra, and it appearing to be a proprietary dispute between the third party petitioner and the petitioner, dismissed the case. The third party had no concern in the village, which is wholly in his, the plaintiff's, possession, therefore the collector should have decreed in his favor; not having so done, he sues for the reversal of the collector's decision.

The defendants, cultivators, in answer to plaint, alleged: the plaintiff was not in possession of the whole village, it is in the possession of Baboo Bugwuntpurshad Naraen Singh, the adopted son of Baboo Rance Singh, the former proprietor, to whom they pay their rent, and hold receipts for the same.

The defendant, Bugwuntpershad Naraen Singh, filed a similar answer to the above. Sheelhoodyal Singh and Hurroo Singh filed a third party petition, urging : that the plaintiff is a slave of Baboo Bugwuntpurshad Naraen Singh, they have colluded together, and instituted this suit, for they have no concern in the village ; 8 annas thereof appertain to the petitioners and Chootoo Singh, and the other 8 annas to others : 4 annas of which is the property of Meerban Singh, and 4 annas was Dulliph Singh's property ; of Meerban's share, his adopted son, Bholah Duth, is in possession, the share of Dulliph Singh is in the possession of the widows of Bance Singh, after their demise it devolves to them, the petitioners, and Rungbadur Singh.

The moonsiff decreed in favor of the plaintiff, on the grounds : the evidence of witnesses proved the defendants, cultivators, paid the rent, previously to 1253 Fuslee, to the plaintiff, who is in possession, therefore has a rightful claim to the rent.

The defendants appealed from the above decision, urging : this suit is a dispute for the proprietary right ; and until that was adjusted it was wrong in the moonsiff to decree against them ; the plaintiff has never been in possession, it is in the possession of Bugwuntpurshad Naraen Singh. In fact, the moonsiff has under the screen decided the proprietary right.

Respondent answered that the assertion of the appellants, that the village is in the possession of Bugwuntpurshad Naraen Singh, is not correct, it never has been, and is in his possession, and the decision of the moonsiff is correct.

COURT.

The decision of dismissal of the case under the summary suit was grounded on the name of the plaintiff not having been entered into the mutation books of the office, and there was a dispute between the third party, Bugwuntpurshad Naraen Singh, and the plaintiff, regarding the proprietary right of the village. And in this court the attorney of the respondent acknowledged there was a suit instituted by Bugwuntpersaud Naraen Singh against the plaintiff, for the proprietary right of the village, in the principal sudder ameen's court, and is still pending. Therefore, the decision of the collectorate is correct. Hence the decision of the moonsiff is reversed, and the original case nonsuited. Until the proprietary right be decided by the principal sudder ameen, each party to pay its own costs.

THE 7TH MAY 1850.

No. 324.

Regular Appeal from a decision passed by Pundit Data Ram, Moonsiff of Teigrah and Beegoo Surai, dated 14th April 1848.

Bugwuntpurshad Naraen Singh, Defendant, (Appellant,)

versus

Huronee Ram, Plaintiff, (Respondent.)

THIS appellant is one of the defendants in case No. 320, just disposed of. He distinctly appeals from the decision passed by the moonsiff in that case, urging: agreeably to Construction No. 696, it was necessary to ascertain to whom the rent in the previous year had been paid, which from the answer to the plaint of the defendants, cultivators, proved had been paid to him, and receipts had been taken for the same. It is also necessary, when there be a dispute regarding the proprietary right of the land, that it should be adjusted prior to passing a decision for the rent. But contrary thereto, and the Construction above quoted, the moonsiff has passed a decree for the payment of the rent.

COURT.

The case No. 230 having been nonsuited, consequently a similar decision is passed on this.

THE 7TH MAY 1850.

No. 323.

Regular Appeal from a decision passed by Pundit Data Ram, Moonsiff of Teigrah and Beegoo Surai, dated 17th April 1848.

Mr. Wallace, (Defendant,) Appellant,

versus

Syud Sufdar Ali, (Plaintiff,) Respondent.

THIS suit was instituted to recover the sum of Company's rupees 39-8, being principal and interest on arrears of rent, from 1254 to the 8 annas instalment of 1255 Fuslee, on account of 14 beegahs of land, situate in village Hurpore Heimah *alias* Parpore, pergunnah Buleeah.

The plaint sets forth: the plaintiff is in possession of 10 annas portion of the abovementioned village, and under a lease granted to him by the proprietors, Imreet Loll Misser and Chutterdaree Loll Misser, on an advance of Company's rupees 600, from 1254 to 1263 Fuslee. The proprietors granted a pottah to the defendant, for 13 beegahs, which, on measurement, was discovered to be 16 beegahs. Although the rate of the village of this kind of land is rupees 4-8 per beegah, which not having been paid for the period

above stated, the plaintiff therefore sues for rent on the measured quantity of land at the rate specified in the pottah.

The defendant answered: the pottah is a mookurruree one (or a lease at a fixed rent in perpetuity) for 13 beegahs of land, to erect a store house thereon for the reception of *tissee*, which having been erected he is in possession, and conformably to the pottah the rent has been paid. The whole village was leased to him to 1253 Fuslee, on an advance of rupees 400, besides which money, the proprietors borrowed other monies on documents, but neither the advance nor the monies borrowed has been adjusted, on which account the payment of the rent for 1254 has been delayed; and in the pottah it is stipulated the rent shall be at once paid annually in the month of Bysack, therefore the plaintiff's suit for 8 annas instalment on account of 1255 Fuslee is erroneous.

The plaintiff states he holds 3 beegahs in excess of the quantity specified in the pottah, ascertained by measurement, but which not having been effected in his presence it was unjust to sue him for rent on that excess.

The moonsiff decreed in favor of the plaintiff, on the grounds: it being specified in the defendant's kubooleut that, if, on measurement, any increase be found, the rent thereon is to be paid for it at the rate of the pottah, and, if less, reduction is to be made accordingly. From the ameen's measurement a larger quantity of land appears to be in the possession of the defendant than that mentioned in the plaint, the rent for 1255 Fuslee not being payable according to the pottah when sued for the interest thereon therefore is not allowed.

The defendant, being dissatisfied with the above decision, appealed from it, urging: the ameen had colluded with the plaintiff, had wrongly measured the land of other individuals as being included in his mookurruree. It was necessary that the measurement should have been made within the boundaries specified in the pottah which was not done.

COURT.

The objections urged by the appellant are frivolous, for being a resident on the spot could have attended to see the completion of the whole measurement by the ameen, and have stated in his appeal, in which direction the ameen had overstepped, that is, effected the measurement beyond the boundary specified in the mookurruree pottah; not having done so, it is a mere appeal without fact. On perusal of the papers of the case, there appearing no cause to interfere with the decision of the moonsiff, it is therefore ordered, that the decision of the moonsiff be affirmed, and the appeal be dismissed, with costs of both courts chargeable to the appellant.

THE 9TH MAY 1850.

No. 373.

Regular Appeal from a decision passed by Moulvee Syud Munneeroddeen Hoossein, Moonsiff of Muhwa, dated 10th May 1848.

Rampurshaud Chowdree, Sheehoopurshaud Chowdree, and Bhola-nauth Chowdree, own brothers to Goorpurshaud Chowdree, deceased, (Plaintiffs,) Appellants,

versus

Meer Moobaruk Ali, brother of Hydur Ali, deceased, Shaik Goolam Abbas, brother to Musst. Asmut, the widow of the deceased abovenamed, and Meer Moosah Ali, and three others, (Defendants,) Respondents.

THIS suit is instituted to recover the sum of Company's rupees 73-0-6, being the principal and interest on bond, dated 30th of May 1840, to be paid in one month from the date of the bond.

The purport of the plaint is : Meer Hydur Ali and Meer Moosah Ali, minhaedaran of the villages Baugh Moosah and Chuck Sulkei, pergunnah Hajypore, took a loan of rupees 40, from Goorpurshaud Chowdree, and executed a bond for the amount, with this condition : that the amount with interest be paid at once within one month from the date of deed, if it be not discharged then, for this sum and 61 rupees of another bond, making a total of rupees 101, a lease of the abovementioned village is to be granted ; if no lease be granted, then this bond is to be considered as a lease. As the money has not been paid or a lease granted, therefore the heirs of Goorpurshaud Chowdree sue the heirs of Hydur Ali, and Moosah Ali himself.

The defendant, Goolam Abbas, in his answer, acknowledges the correctness of the plaint, and alleges : Meer Moosah Ali, one of the borrowers of the money, is in existence, and has the means to discharge his portion of the loan ; that the other borrower is dead, who, during his existence, made over the whole of his property to his wife, Musst. Asmut, in lieu of her marriage dower, who having died, he is heir to her, and is ready to discharge Hydur Ali's portion of the loan.

Hasheem Ali filed a third party petition, alleging : the plaintiffs had caused the attachment of the surplus proceeds of auction sale of the abovementioned villages, which were sold on account of revenue due to Government from them, previously to which he had purchased the villages from Musst. Asmut, hence the right to the surplus proceeds belongs to him, therefore hopes the attachment will be taken off and surplus proceeds made over to him.

The defendant, Musst. Zeibun, alleges : this false suit was instituted by collusion of the plaintiffs with Goolam Abbas Ali, Meer Moosah Ali, and other defendants, together with one Yar Ali, who

is in enmity with her: for Meer Hydur Ali never borrowed any money nor executed any bond. He was her eldest brother, and 8 annas of his property devolves to her, 4 annas to his widow, Musst. Asmut, and 4 annas to Meer Moosah Ali and others of his brothers.

Meer Moosah Ali, in his answer, alleges: he neither took the money nor executed the bond. The plaintiffs have instituted a false suit in collusion with one Yar Ali, who is in enmity with him.

Defendants, Mussts. Sukeenah and Sunjeedah and Syud Moobaruk Ali, allege: that Mussts. Sukeenah and Sunjeedah are not heirs to, or have any claim to share in the property of, Hydur Ali. Moobaruk Ali, Musst. Zeibun, Meer Moosah Ali, and others are in possession of the property of the demised Hydur Ali. The plaintiffs' suit on the bond is entirely false.

The moonsiff dismissed the suit, on the ground: there being a suspicion of the bond being fabricated, from the appearance of oldness of the paper, and freshness of the ink thereon, and from the evidence of the witnesses adduced by the denying defendants, it is evident one of the borrowers, Meer Moosah Ali, was at Patna on the date of the bond, and Meer Hydur Ali was at that time very ill, hence it is evident the suit is false. The plaintiffs to be chargeable with costs of suit, with the exception of that of Meer Goolam Abbas Ali, who having averred the correctness of the plaint, and thereby evinced his collusion with the plaintiffs in the false suit, to pay his own costs.

From this decision the plaintiffs appealed, urging: one of the defendants, Goolam Abbas Ali, acknowledged the correctness of the plaint, and the evidence of the subscribing witnesses proved the loan and the execution of the bond, notwithstanding which, on his mere suspicions, dismissed the case, though the evidence of witnesses of the denying party was not liable to be heard.

COURT.

From the perusal of the papers of the case there appears to be a seeming contest to seize on the property of Hydur Ali, demised. Although the dismissal of the case on the grounds assigned be not incorrect, yet the release of one of the defendants, who is alleged to have colluded with the plaintiffs for the institution of the false suit, with a mere charge of his own costs, is not consonant to equity, particularly, as he avers, he is ready to pay Hydur Ali's portion of the bond; whereby it became necessary to ascertain whether or not he is liable, by his own assertion, to pay that portion of the bond, which he seems so willing to do, with proportionate costs thereof. This not having been taken into consideration by the moonsiff, shows the investigation of the case was incomplete. Therefore, ordered, the decision be reversed, and the case be returned for re-investigation on the points above indicated. Amount of stamp of appeal plaint to be returned to plaintiff.

THE 15TH MAY 1850.

No. 402.

Regular Appeal from a decision passed by Pundit Data Ram, Moonsiff of Teigrah and Beegoo Surai, dated 2nd June 1848.

Sheikh Amjud Ali, (Plaintiff,) Appellant,

versus

Sheikh Mahomed Ali and nine others, Purchasers, and Achumbeet Loll, Vendor, (Defendants,) Respondents.

THE amount of action is laid at Company's rupees 58-12, being three times the amount of the annual revenue of the property contested for. The suit is for the right of pre-emption of 5 annas, 6 gundahs, 2 cowries, 2 krants, that is, a third portion of the whole village Chuck Lateef Jummhye, principal and dependency, pergunnah Bulleah.

The plaint declares: the village is held in three portions, one share by the plaintiff, another share by Gunneish Duth, the third by Achumbeet Loll, the vendor, who sold his share, without giving the plaintiff any intimation thereof, for the sum of rupees 350, to Sheikh Mahomed Ali and others, the bill is dated 8th of October 1840, and the price stated therein to have been sold for rupees 625. With a view to prevent the plaintiff claiming the right of pre-emption, the registry of the document was effected on the 10th of October 1843, corresponding with the 2nd of Kartick 1250, on which date the plaintiff obtained information of the sale, and he instantly performed the tullub mouseebut and eshhad and despatched the amount mentioned in the bill of sale to the vendor and purchasers, who were then at Monghyr, by the hands of Hoolas Raie, Nowbut Singh, and Tillok Mhatoon. The vendor and purchasers declining to take the tender of the purchase money, a suit was instituted on the 6th November 1843, claiming the right of pre-emption of the property, which was on the 30th of April 1844 struck off the file, under Section 1, Act XXIX. 1841. The suit was renewed on the 22nd of May 1844, which, on appeal from the decision of the moonsiff, the appellate court discovering the replication had been filed after the expiration of six weeks from the date of filing the answer, it was returned to the moonsiff's court to re-investigate the case on that point; in conformity thereto the moonsiff struck it off the file on the 28th of August 1847. The plaintiff again renews the suit within the interval that has passed. Two of the purchasers have died, hence their heirs are included as defendants in this case.

The defendants, Sheik Furrut Ali, Meenut Hoosein, and Abdool Thaluk answered, the present plaint is contrary to those previously instituted. If the suit for pre-emption had been correct, the proofs would have been filed in the former suits; not having been filed, those suits were dismissed. The tullub mouseebut and eshhad were not according to law performed,

The defendants, Sheikh Mahomud Ali Reeza and seven others, filed a similar answer to the above.

Achumbeet Loll, vendor, alleged he had given information to the plaintiff of his intention to sell, and he declined to become the purchaser, he therefore disposed of the property to the defendants for the price mentioned in the bill of sale and unequivocally received the amount purchase.

The moonsiff dismissed the suit, on the ground: from the futwa of the mooftee, the tullub mouseebut had not been performed according to law. And from the evidence of the witnesses in the former case, the performance of the tullub mouseebut had not been proved.

From this decision the plaintiff appealed, urging: the performance of the tullub mouseebut and eshhad had been clearly proved. The futwa of the mooftee does not mention from what law book his opinion was given, it is clearly conjectural, hence the decision of the moonsiff is unjust and contrary to the evidence of the case.

COURT.

In the two former complaints of this case, no mention is made where the plaintiff heard that the sale of the property had taken place, and in neither of those complaints is there any mention that, on hearing of the sale, he instantly got up and performed the tullub mouseebut and eshhad; thus the affirmation enjoined by the Mahomedan law, to secure the claim of right to pre-emption of purchase, was not made; nor does the evidence of the witnesses have tendency to prove any thing beyond taking the money and tendering the same to the vendor and the purchasers on the part of the plaintiff as claiming the right of pre-emption. Hence the decision of the moonsiff being correct, it is therefore affirmed, and the appeal dismissed, with costs of both courts chargeable to the appellant.

THE 22ND MAY 1850.

No. 47.

*Regular Appeal from a decision passed by Moulvee Niamut Ali Khan,
Principal Sudder Ameen of Moorzufferpore, dated 14th May 1849.*

Manual Baptice and James Wilson, lessee and under-lessee,
(Defendants,) Appellants,

versus

Sheikh Ashruff Ali and others, (Plaintiffs,) Respondents.

THE amount of action was laid at Company's rupees 4,849-9-6½, and the suit instituted for the possession of 12 annas share of village Meessah, pergunnah Burwarah.

The principal sudder ameen decreed the 12 annas share of the village to the plaintiff, and that the lessee and under-lessee were to pay the rent thereof to the decreeholders.

The lessee and under-lessee appealed from the decision. After the judge had admitted the appeal with direction to issue notice to the respondents, the appellants this day filed a petition of withdrawal of their appeal. After the necessary enquiry of the genuineness of the petition,

COURT,

Ordered, the case to be struck off the file, and the appellants to be chargeable with the costs of this appeal.

THE 23RD MAY 1850.

No. 693.

Regular Appeal from a decision passed by Pundit Data Ram, Moonsiff of Teigrah and Beegoo Surai, dated 22nd November 1848.

Myput Singh and five others, (Plaintiffs,) Appellants,

versus

Bootee Singh, (Plaintiff,) Respondent.

THE amount of action is laid at Company's rupees 18-6, and the suit instituted for the firm possession of 1 beegah, 4 biswas, 10 dhoors of land, situate in village Cheetoore, pergunnah Bulleeah.

The plaint states the abovementioned village has been partitioned in two parcels, one of 12 annas portion, and the other of 4 annas. Taking the 4 annas portion as an entire estate of 16 annas, 8 annas 16 gundahs thereof is the share of the defendants, 7 annas 4 gundahs the share of the plaintiff, who leased it to Bhowannee Singh: the lessee sued Myput Singh, Banee Singh, and Minbode Gop for arrears of rent on the cultivation of the spot sued for to the amount of rupees 12-3, in which lease the defendants stated the cultivation was within the share of Hunman Duth in the said puttee, and the rent was regularly paid to him. The moonsiff dismissed that suit on the grounds: the defendants' assertion that the land they cultivated belonged to another sharer to whom they had paid the rent, it therefore became necessary for the plaintiff first to establish his proprietary right to the spot. This decision being appealed from was confirmed, therefore he now sues for the proprietary right of that land.

The defendant, Myput Singh and seven others, allege: the land is within their own puttee, or partition, to which the plaintiff has no right. It was formerly in their own cultivation, and has been recently made over to Munbode to cultivate, who pays the rent thereof to them.

Bishnauth Singh and four others corroborate the answer of the above defendants.

Munbode Gop, in his answer, alleges that he pays the rent to Myput Singh and others, and he has no concern in the litigation.

Doolar Singh and five others filed a third party petition, in corroboration of the answer of the defendants.

The moonsiff decreed in favor of plaintiff, on the grounds: the principal sudder ameen had in the revenue case deputed an ameen to ascertain in whose division the spot under dispute appertained; from that ameen's report and evidence of witnesses adduced by the plaintiff it is clearly proved the spot appertained to the plaintiff: and the defendants adduced no proof to their allegations on the ameen's report.

From this decision the defendants appealed, urging: Doolar Raec pecadali, and Girdharry Raec, the former lessee of the puttee, the plaintiff's witnesses, their evidence, together with documents filed, and evidence of witnesses on their part, prove the land appertains to them, and is in their possession.

The respondent appointed an attorney but filed no reply.

COURT.

A number of witnesses, whose depositions were taken by the ameen deputed to the spot in the revenue case, deposed to the revenue having been paid to the defendants, and two only deposed that the land belonged to the plaintiff. The defendants, in their answer to plaint, suggested the land of both parties should be measured to ascertain to which it belonged, and that it would prevent future litigation; and the plaintiff, in his replication, acquiesced, provided the measurement did not interfere with his 12 annas portion of the village already partitioned, and the revenue thereof is distinctly paid to the Government. As the measurement of the 4 annas portion of the village, in which both parties are sharers, would not only conduce to ascertain to which party the spot under litigation belonged; but would most probably prevent future litigation between the parties, whose willingness to that measure not having been taken into consideration by the moonsiff, shows the investigation of the case to be incomplete. Therefore, ordered, the decision be reversed, and the case be returned for re-investigation agreeably to the measure of both parties which they appear to be willing should be effected. The amount of stamp of appeal plaint be returned to the appellant.

THE 27TH MAY 1850.

No. 521.

*Regular Appeal from a decision passed by Moulvee Niamut Ali Khan,
Principal Sudder Ameen of Mozufferpore, dated 17th July 1847.*

Chowdree Rooderpurshad, son of Gungapurshad *alias* Soobah Lall,
(Defendant,) Appellant,

versus

Futtee Chund Sahoo, after his death, Musst. Soodee Koonwur, his
widow, (Plaintiff,) Respondent.

THIS suit was instituted by the respondent, a banker, to recover the sum of Company's rupees 2956-12, being the principal and interest due from the defendant as exhibited by the accounts opened and headed in the name of the defendant in the ledger book of the plaintiff's banking house. The defendant declining to discharge it is the cause of this suit.

The defendant acknowledges having money transactions with the plaintiff's banking house, but those were merely to receive the rents of his estate, from which payments of the Government revenue of that estate were to be made into the treasury of the collectorate, which matter had been adjusted on the 9th of Poos 1250 Fuslee: the other items of charge are wholly unaccountable, unjust, and false.

The principal sudder ameen decreed in favor of the plaintiff, on the grounds: from the accounts extracted from the ledger book and evidence of witnesses the plaintiff's suit is established. And an ameen was deputed to make enquiry from the other bankers whether the ledger book was correct according to the customary usage of banking houses, and whether the charges in the ledger were correct or not, and particularly if the items objected to by the defendant were customary or not. From the ameen's report it appears all were correct with the exception of an item of rupees 100, which was charged twice, which sum and the interest thereon being deducted the balance is decreed.

From this decision the defendant appealed: the judge, Mr. Cathcart, considering the suit had not been sufficiently investigated, directed the case to be returned to the principal sudder ameen for re-investigation, to ascertain whether the items charged that are objected to by the appellant had been paid or not.

After re-investigation of the case, the principal sudder ameen passed a decree again for the plaintiff, on the grounds: it not appearing that the books of the banker were incorrect, and being admissible in proof of debts incurred agreeably to the entries therein, he was of opinion the suit was just agreeably thereto, therefore decreed again in favor of the plaintiff.

The defendant being dissatisfied with this decision appealed from it, urging: after the case had been returned for re-investigation, the

principal sudder ameen called for proofs, but none was filed by the plaintiff; and without the receipt of any proof, the principal sudder ameen has again passed a decree in favor of the plaintiff, merely on the admissibility of the ledger book, which is not just. The items of charges objected to are:

On the 16th of Kartick, agreeably to your chittee of the 10th of Kartick gave to Meer Muzur Ali,	Co.'s Rs.	250	0	0
On the 6th of Aughun, Meer Muzur Ali took in his own name and gave a note thereof,	Co.'s Rs.	100	0	0
On the 24th of Aughun, agreeably to your chittee, dated 19th of December regarding the village Burmole for taking back the share of 3 annas bill of sale, Company's rupees 500, viz., gave to Assa Rae, purchaser, through the means of Meer Muzur Ali,	Co.'s Rs.	400		
On the 6th of Aughun had been given to Meer Muzur Ali and entered into your account which agreeably to your tunka is now credited to your account and his note returned,	Co.'s Rs.	100		
	————— Co.'s Rs.	500	0	0
On the 9th of Poose, through the means of Meer Muzur Ali, mooktarkar, agreeably to your letter a hoondie was drawn on Balukee Lall, as deposited by you on the 10th of Poos, payable after 11 days at Patna to Sheikh Buhadoor Ali, vakeel,		512	8	6
On the 13th of Poos, agreeably to your chittee of the 12th of Poos, through the means of Meer Muzur Ali was given to Baba Ghee on taking his leave,...		500	0	0

Beside these, there are two charges of payment made to persons in the respondent's employ, the sum of rupees 177-10-3 to Meiwah Lall for his trouble in paying the revenue into the collectorate, and to Hunmumpurshad, rupees 12 for trouble in writing the invoices, from which also hope to be exempt.

The respondent alleged that Meer Muzur Ali was in the employ of the appellant (defendant): to admit all the payments made through him in the banking house, and to disallow his withdrawals is not equity. The decision of the principal sudder ameen is passed agreeably to the ledger book, which is just.

COURT.

This case was by Mr. Cathcart, judge, under date 22nd of December 1845, returned to the principal sudder ameen for re-investigation, to ascertain whether the charges objected to by

the defendant (appellant) had or not been paid. The principal sudder ameen called on the plaintiff to file proofs. The only charge attempted to be proved was the sum of rupees 510, payable by hoondee to Sheikh Buhadoor Ali, vakeel at Patna, one witness only deposed to the payment of the amount of hoondee to the banking house of Ajoodeeahpurshad and Ramjeewun Lall. This was refuted by the answers to the interrogations put to muhajun Ajoodeeahpurshad and Pureeag Dass, the gomashta of the muhajuns, and the examination by other muhajuns of the ledger and other books of the firm of Ajoodeeahpurshad and Ramjeewun Lall, adduced in the court of the judge at Patna. Owing to some letters said to have been written by the defendant to the plaintiff, irregularly filed by a witness adduced by the plaintiff, the appellant filed a petition, denying the validity of the letters, and alleged there was no suit of pre-emption instituted in the court of the sudder ameen, in which he, the appellant, was plaintiff, *versus* Assa Raee defendant, nor did he, the appellant, send Assa Raee to take rupees 400: from the plaintiff, respondent to ascertain the truth of this matter he solicited a subpoena might be issued for Assa Raee, to give his evidence, and enquiry be made in the record office whether or not any such case was instituted in the court of the sudder ameen. From the result of the enquiry and the deposition of Assa Raee, declare the charge of this sum of rupees 400 to be unfounded. Notwithstanding the clear refutation of the two charges, rupees 510 and rupees 400, the principal sudder ameen decreed the whole amount of suit in favor of the plaintiff, respondent, on the supposed correctness of the entries in the ledger book, and muhajun books being admissible in court. The evidence taken regarding the entries in the ledger did not proceed so far as to establish the several sums charged were *bonâ fide* seen to have been paid into the hands of Meer Muzur Ali, or into that of any other person. Even if such evidence had been given, still without written receipts of such payment on a stamp according to their respective amounts, a decree cannot equitably be passed: for whatever credit may be given to the books of the muhajuns, they are not by any regulation exempted from giving and taking receipts on stamps of the value according to the amount received and disbursed in their transactions, as well as all other individuals. The sums objected to by the appellant have not been proved to have been paid, consequently a decree is passed in favor of the appellant for the amount of the five items of charge with their interest be deducted from the amount of suit together with rupees 189-10-3, without interest under Construction No. 997, being paid to persons in the plaintiff's, respondent's, own employ. The remainder, together with interest, is payable to the respondent. The appellant chargeable with costs on the extent of amount against him, and the remainder of the costs chargeable to the respondent.

By this the decision of the principal sudder ameen is amended.

THE 28TH MAY 1850.

No. 695.

Regular Appeal from a decision passed by Pundit Data Ram, Moonsiff of Teigrah and Beegoo Surai, dated 13th November 1848.

Nynsook Race, (Plaintiff,) Appellant,

versus

Nuttoo Racee, Moorut Racee, and four others, (Defendants,) Respondents.

THIS suit is instituted to recover the sum of Company's rupees 29, said to have been made away with by the defendants after having collected it from the ryots of $2\frac{1}{4}$ annas share of the village Mhajole Rajekhan, pergunnah Boosaree, of which the plaintiff is said to be lessee under a deed of lease granted to him by Pheinkoo Racee, Soomerrun Racee, and others, proprietors of the said village. The defendants refusing to refund it, therefore the plaintiff sues for the same.

Nuttoo Racee and Moorut Racee, defendants, acknowledge the plaintiff has obtained a lease of $2\frac{1}{4}$ annas share of the village, but that they are 1 pie sharers therein, that is, 1 gundah thereof belong to them, and 2 gundahs to the other four defendants, and 2 gundahs to Bundoo Racee and Booder Racee. In the years 1254 and 1255 Fuslee, we and the other defendants collected the sum of Company's rupees 29, and expended it. We are willing to repay our respective portions, but the plaintiff would not take them.

The other defendants allowed the case to go by default.

The moonsiff decreed in favor of the plaintiff against the two defendants, who acknowledge having collected the money, and exempted the other defendants, on the ground the evidence of the plaintiff's witnesses that these two defendants made the collection, and against the other defendants, it was not proved.

From this decision the plaintiff appealed, urging: the decision of the moonsiff was not just, for the other defendants, who allowed the case to go by default thereby tacitly acknowledge the claim, and should not have been exempted from the decree.

COURT.

The defendants, who acknowledged they had joined the others in making the collection, alleged they had tendered to refund their proportional share of the collection, which was refused by the plaintiff; that point should have been enquired into.

This was not done, and the lease on which the plaintiff grounds his claim not being filed nor called for and proved, shows the investigation was incomplete. Therefore, ordered, the decision of the moonsiff be reversed, and the case be returned for re-investigation on the points above indicated: the amount of stamp of appeal plaint be returned to the appellant.

THE 28TH MAY 1850.

No. 697.

Regular Appeal from a decision passed by Kazeer Mohummud Allum, Moonsiff of Coylee, dated 11th November 1848.

Joobah Koonwur and ten others, (Plaintiffs,) Appellants,

versus

Inderjeet Koonwur and nine others, (Defendants,) Respondents.

THIS suit was for the recovery of Company's rupees 95-2-11½, being the principal and interest of arrears of rent from 1249 to 10 annas instalment of 1255 Fuslee, on account of cultivation of different quantities of land in the different years, situate in the village Hurpoorwah, pergunnah Nanpore.

The plaint sets forth: the whole village is under six distinct puttees or divisions; first ¾ annas; second 8 annas; third 2 annas; fourth 1 anna; fifth ½ anna; sixth 1 anna. Within the 3½ annas division the plaintiffs are 1½ anna sharers in their own right, and 1½ anna of the sued division is leased to the plaintiffs by Bugwunt Naraen Singh and others; of the remaining half anna, the defendants are sharers of one pie and the defendants in the other case are sharers of the one pie. The defendants in this case have cultivated different quantities of land in the different years, but will not pay to them, the plaintiffs, their proportionate share of the rent thereof, therefore they sue them agreeably to the putwarree's account.

The defendants, in answer, alleged the plaintiffs are only entitled to 14 gundahs share, and that they themselves are 8 gundahs sharers, and that all the sharers cultivate their khood-kasht land, that neither pay any rent to the other. The plaintiffs have merely instituted this suit to establish claim to a larger share than they are entitled to.

Munraje Koonwur and two others filed a third party petition, urging: that they were 16 gundahs sharers within the 3½ puttee or division, the plaintiffs have no share therein, what they held has been sold, hopeful there will be no injury done to their rights.

The moonsiff nonsuited the case, on the grounds on perusal of the documents filed by both parties it appears to be a dispute regarding their shares: to inquire into and adjust the shares of both parties is not to be effected without a suit for their proprietary rights: both parties to pay its respective costs.

From this decision the plaintiffs appealed, alleging: the defendants acknowledged the cultivation; and in proof of the share held by the defendants copy of a kyfeyut of their shares filed in another case, and their answer to plaint in another case were filed, of which the moonsiff took no notice.

COURT.

The first point in this case is to ascertain what are the shares appertaining to the plaintiffs and to their lessors, then what shares are held by the defendants on which they may be liable or not to rent. From the documents filed the shares of the plaintiffs are not ascertainable, nor the shares held by the lessors, whose deed of lease is not filed consequently. It is not necessary to ascertain what shares are held by the defendants. Hence the decision of the moonsiff is considered to be correct. Therefore, ordered, the decision of the moonsiff be affirmed, and the appeal dismissed, with costs of this appeal chargeable to the appellants.

THE 28TH MAY 1850.

No. 696.

*Regular Appeal from a decision passed by Kazee Mohummud Allum,
Moonsiff of Coylee, dated 11th November 1848.*

Joobah Koonwur, and ten others, (Plaintiffs,) Appellants,

versus

Jummun Koonwur and seven others, (Defendants,) Respondents.

THE amount of action of this case is laid at Company's rupees 41-4-9, being principal and interest of arrears of rent from 1249 to 10 annas instalment of rent of 1255 Fuslee, on cultivation situate in village Hurpoorwah, pergunnah Nanpore.

This suit is precisely similar to case No. 697, just decided, and a similar decision passed in this is in that.

THE 28TH MAY 1850.

No. 700.

*Regular Appeal from a decision passed by Kazee Mohummud Allum,
Moonsiff of Coylee, dated 17th November 1848.*

Sheetaub Singh, Ramnauth Misr, and Bugwan Duth Misr,
(Plaintiffs,) Appellants,

versus

Bustee Misr, (Defendant,) Respondent.

THE first two appellants above noted state themselves to be lessees of the village Gooreeah, pergunnah Bhadurpore; and that they admitted Bugwan Duth Misr as a sharer therein; that the defendant is a cultivator of the land of the village to the extent of 10 beegahs 11 biswas, and has fallen in balance of rent from 1254 to 12 annas instalment of rent of 1255 Fuslee to the amount Company's rupees 38-15-9, being principal and interest agreeably to the putwarree's account, the payment of which he puts off under sundry excuses; they therefore sue him for the amount,

The defendant pleaded he held 9 beegahs 1 biswa in cultivation, agreeably to a pottah dated 15th of Assar 1251, at the annual rent of rupees 25-5-7½ payable in cash, agreeably to which pottah he had paid the whole rent to 1255 Fuslee, and in fact for the years 1254 and 1255 Fuslee, he had paid rupees 52-4, as the receipts will show; and as rupees 50-11 only were payable to the plaintiffs, there is a surplus due from them to himself 1 rupee 9 annas.

The moonsiff decreed the sum of Company's rupees 17-6-9 in favor of the plaintiffs after full investigation of the case, rejecting two of the defendant's receipts which were not proved, and declaring the rent payable agreeably to the pottah held by the defendant, it being dated prior to the roybundy of the plaintiffs; the pottah being evidently written by the putwarree, as the writing thereof perfectly corresponds with the putwarree's signature on the roybundy. The roybundy filed by the plaintiffs is not valid, it is of a subsequent date to that of the defendant's pottah, and the ryots' names thereon are written by the putwarree, which shows the putwarree has colluded with the plaintiffs in drawing out this document, otherwise many of the ryots themselves would have signed their own names, therefore the evidence of the plaintiffs' witnesses is not to be depended upon.

From this decision the plaintiffs appealed, pleading that the evidence of witnesses proved the collections were made agreeably to the roybundy and not the pottah, which is a fabrication, for the putwarree denies the writing thereof: the decision of the moonsiff in awarding a portion only of their claim is unjust.

COURT.

The lease on the virtue of which the suit is instituted not being filed or called for and proved, nor the agreement by which the third plaintiff is admitted to join in the suit, show so much of the investigation is incomplete. Therefore, ordered, the decision of the moonsiff be reversed, and the case returned for re-investigation on the points above indicated. The amount of stamp of appeal plaint be returned to appellants.

THE 28TH MAY 1850.

No. 702.

*Regular Appeal from a decision passed by Kazee Mohummud Allum,
Moonsiff of Coylee, dated 18th November 1848.*

Beechhoo Rawut, (Defendant,) Appellant,

versus

Domee Singh and Bhyjoo Singh, (Plaintiffs,) Respondents.

THIS suit was instituted to recover the sum of Company's rupees 143-9-6, being the principal and interest of arrears of rent from

1253 to 10 annas instalment of rent of 1255 Fuslee, on cultivation of land situate in village Putongeeah Gobind, pergunnah Tillok Chuwand.

The plaint sets forth: of the whole abovementioned village 2½ annas share belongs to the plaintiffs, the remainder to other sharers. That within the plaintiffs' khood-kasht land, the defendant cultivated 18 beegahs thereof, at an annual rent of 67 rupees 3 annas, and having fallen in balance from 1253 to 10 annas instalment of 1255 Fuslee, of which 47 rupees only has been paid, and having put off the payment of the balance which is still due from the putwarree's accounts, they accordingly sue agreeably to those accounts.

The defendant, in his answer, declares he neither cultivated the plaintiffs' land, nor granted a kubooleut to the plaintiffs. The receipt of rupees 47 rent from him, as stated in the plaint, is false, for he resides two coss from the village of the plaintiffs, and it is scarcely possible he would proceed so far to cultivate land when he could obtain it nearer to his own residence. The suit is instituted from enmity between the proprietors of the two villages.

The moonsiff decreed in favor of the plaintiffs, on the grounds that the evidence of the putwarree and the Jaite ryots establishes the plaint. The four witnesses adduced by the defendant being residents of another village, their evidence is not to be depended on. A list of four other witnesses, proprietors of the village, was filed, and the subpoena for them was twice issued, but the defendant did not point them out to the serving peon. To the proposition of deputing an ameen to make the necessary enquiry on the spot the defendant objected: from this objection it is clear the allegations of the defendant are false.

From this decision the defendant appealed, urging: he resides two coss from the place, hence he could not proceed such a distance to cultivate the land. The witnesses adduced by the plaintiffs are persons in their employ, therefore their evidence should not be depended on. The plaintiffs are wealthy persons and himself a poor man, the ameen would not have done him justice. The moonsiff himself should have proceeded and made the enquiry.

COURT.

The defendant denies having cultivated the land, and pleads his residing at such a distance from the spot as a reason he could not have cultivated the land in question. Khood-kasht zumeen is land appropriated by the landholders for their exclusive benefit; for the cultivation of such land, it is supposed they would engage a trustworthy person, well known to themselves, and resident within their own village, and not a person residing at a distance, and in another village not appertaining to them. The employment of a ryot of another village can only occur from paucity of ryots in their own vil-

lage, which has not been shown; and on employment of a ryot of another village, it is customary to enter into written engagements with him, which has not been done for the cultivation of the land in question. The defendant residing in a different village, and the evidence of witnesses of his own village adduced by him, is equally to be depended upon as that of the witnesses adduced by the plaintiffs. To ascertain with some precision whether the defendant cultivated the khood-kasht zumeen of the plaintiffs, the putwarree of the village should have been called on to produce the entire village accounts, that is, the jumma-wassil-bakee accounts for three years prior to the present claim, and the putwarree to show therefrom whether the defendants had cultivated the land in question, from which accounts would be ascertained the quantity of cultivation and rate of rents. Or if the land be not at too great a distance from the cutcherry and would not delay the duties thereof, the moonsiff himself might have gone to the spot to make the necessary enquiries. One or other of these having been requisite, and not carried into execution, shows the investigation was incomplete. Therefore, ordered, the decision of the moonsiff be reversed, and the case be returned for re-investigation on the points above indicated. The amount of stamp of the appeal plaint be returned to the appellant.

THE 28TH MAY 1850.

No. 703.

*Regular Appeal from a decision passed by Kasee Mohummud Allum,
Moonsiff of Coylee, dated the 18th November 1848.*

Mohur Rawut, (Defendant,) Appellant,
versus

Mohunt Deumber Doss, (Plaintiff,) Respondent.

THE amount of action in this case is laid at Compay's rupees 291-1-9, being the principal and interest of arrears of rent due from 1243 to 10 annas instalment rent of 1255 Fuslee, on the cultivation of 31 beegahs of khood-kasht zumeen appertaining to the plaintiff, situate in village Coodwarah Ghureeb, pergunnah Tillok Chuwand.

The plaint of this case is similar to case No. 702, and the answer thereto also similar, with the exception that the defendant stated he resides 3 coss distant from the land said to have been cultivated by him.

The moonsiff's decision is similar to that in case No. 702, and this court passed a similar decision to that in case No. 702.

THE 29TH MAY 1850.

No. 322.

Regular Appeal from a decision passed by Kazeer Mohummud Allum, Moonsiff of Coylee, dated the 15th April 1848.

Musst. Ulfoot, (Plaintiff,) Appellant,

versus

Meer Moorad Ali, (Defendant,) Respondent.

THE amount of action of this suit is laid at Company's rupees 12-12, being three times the amount of the annual revenue of the portions of villages under litigation.

The plaint sets forth: that Meer Moorad Ali sold to the plaintiff one pie share within the share of one anna and a trifle more, of the puttee of 15 annas of village Sunkerpore; and also 2 pie portion within 8 annas puttee of village Bazeedpore Goodole, pergunnah Treesut, for the sum of Company's rupees 200, under bill of sale, dated 24th of Bhadoon 1252 Fuslee; after it had been registered, it was made over to the plaintiff, who was put in possession of the portion sold of village Bazeed Goodole, but the mutation of her name thereto had not taken place in the collectorate, and the plaintiff had not been put in possession of the purchase in the village of Sunkerpore, therefore this suit is instituted for the mutation of her name in the records of the collectorate of her purchase in the village Bazeedpore Goodole, and for the possession of her purchase in the village of Sunkerpore.

The defendant acknowledged the execution of the bill of sale, but denies having received more than rupees 150 of the purchase money, and that there still remained 50 rupees unpaid of the amount sale, therefore the possession of the purchase in village Sunkerpore has not been given, or the mutation of her name to the other purchase effected in the records of the collectorate.

The moonsiff dismissed the case, on the grounds: that although the subscribing witnesses to the bill of sale prove the delivery and receipt of the purchase money, but it appears the stamp on which the bill of sale is written was purchased on the 19th of September 1844, and the English date of the execution of the bill of sale is the 20th of September 1844, which corresponds with the 24th of Bhadoon 1251 Fuslee, the Fuslee year on the bill of sale is the 24th of Bhadoon 1252 Fuslee. The plaintiff has not filed any petition for the mistake being rectified. Owing to the difference of one year in the Fuslee year, the evidence of the witnesses cannot be depended upon.

From this decision the plaintiff appealed, urging: the defendant acknowledged the execution of the bill of sale; the dismissal of the suit by the moonsiff is not just, for it is evident the wrong year was

written by mistake of the writer of the bill of sale, for the English date inserted thereon establishes the precise time. In the interior the change of the year occurs in the month of Bhadoon.

COURT.

The date 20th of September 1844, English era, according to the general calendar, corresponds with 24th of Bhadoon 1251 Fuslee, the insertion of 1252 Fuslee in lieu of 1251 Fuslee would be an error of the transcriber of the bill of sale; but he and the subscribing witnesses to the bill of sale deposed, that in the interior the people consider the new year commences with the first of Bhadoon. Be that as it may, no injury occurs therefrom, for the English date and year thereon, together with the acknowledgment of the defendant, that he executed the bill of sale, and the moonsiff himself considered the substitution of 1252 Fuslee to be a mere mistake, nevertheless, erroneously dismissed the case. Therefore, ordered, the decision of the moonsiff be reversed, and the case be returned for re-investigation, in order to pass a decision in conformity to the merits of the case.

The amount of stamp of appeal plaint be returned to the appellant.

THE 29TH MAY 1850.

No. 698.

Regular Appeal from a decision passed by Kasee Mohummud Allum, Moon-siff of Coylee, dated the 10th November 1848.

Sheehoo Lall Singh, Sheehoo Deen Singh, and two others,
(Plaintiffs,) Appellants,

versus

Mungnee Ram and Simboo Dutt, (Defendants,) Respondents.

AMOUNT of action of this case is laid at Company's rupees 16-14, being three times the amount of the annual revenue of the property under litigation, and the suit instituted for possession and mutation of the names of the plaintiffs in the records of the collectorate of 10 gundas portion within 1 anna 15 gundas of the whole village Duma-meejoosur, pergunnah Mhyloh.

The plaint sets forth: that Mungnee Ram, on his own part and as attorney on the part of Simboo Dutt, the other defendant, sold 10 gundas of the abovementioned village under conditional bill of sale for the sum of rupees 355 to Sheehoo Lall Singh, Sheehoo Deen Singh, and Ram Adeen Singh, the latter being ancestor of two of the plaintiffs. The bill of conditional sale is dated 19th May 1828, for the period of one year and the bill is duly registered. After the

expiry of the term, application was made under Regulation XVII. 1806, and, on the 16th of February 1835, the court passed an order to sue regularly for the foreclosure of the sale, when the defendants themselves let them into possession, and agreed to cause the mutation of their names; but not having done so and now being opposed to that measure, it becomes necessary to sue under the order passed by the court under Regulation XVII. 1806, for the established possession of the property and mutation of their names in the records of the collectorate.

Simboo Dutt, defendant, answered: within the 1 anna 15 gundas of the village, he is a third portion sharer, and of which he is still in possession. That he neither executed the bill of sale nor received the purchase money. That more than 12 years have elapsed since the court ordered to sue for the foreclosure.

Defendant Mungnee Ram filed no answer.

Kunnyah Lall filed a third party petition, alleging: 25 beegahs within the khood-kasht of the proprietors was leased to him on an advance of rupees 201 from 1232 to 1241 Fuslee, on an annual rent of 12 rupees, stipulating until the advance was discharged he was to remain in possession of the lease. The statement of the plaintiffs of being in possession is false.

Gopaul Singh and two others filed a third party petition, alleging: 12 beegahs was leased to them. The plaintiffs' statement of being in possession is false.

The moonsiff dismissed the case, on the grounds: from the evidence of the witnesses adduced by the plaintiffs, it is discovered that at the time the bill of sale was executed Simboo Duth, one of the defendants, was not present, the village is held in joint occupancy, their distinct shares are not ascertainable; and from the ameen's enquiry the possession of the plaintiffs is not proved. The date of court's order to sue for foreclosure is 16th February 1835, from which period more than 12 years have elapsed, the suit of plaintiff is not cognizable.

From this decision, the plaintiffs appealed, alleging: in the deed of bill of sale the name of Simboo Dutt is written by his attorney, possession of the property by them was clearly proved by the evidence of witnesses. The defendants having of themselves let them into possession, the case does not fall under limitation rules; the decision of the moonsiff is erroneous.

COURT.

The objection against the decision of the moonsiff is of no benefit to the appellants, for the original plaint of this suit shows the case falls under the rule of limitation. The plaint declares under Regulation XVII. 1806, an order was passed by the court, dated 16th February 1835, to sue regularly for the foreclosure, but without a suit the (vendors) defendants let them into possession, but did

not cause the mutation of their names in the Government office. Although in possession, but defendants being inimical to the measure of the mutation, it becomes necessary to sue in conformity to the order of Regulation XVII. 1806, for the firm possession and mutation of their names in the Government office. The order of the court to sue for possession is dated 16th February 1835, and this suit was instituted on the 10th January 1848, showing an interval of 12 years, 10 months, and 22 days had elapsed, consequently the appeal must be dismissed under the limitation rule, and the decision of the moonsiff is affirmed; costs of both courts chargeable to the appellants.

ZILLAH TWENTY-FOUR PERGUNNAHS.

PRESENT: H. T. RAIKES, Esq., JUDGE.

THE 3RD MAY 1850.

Case No. 41 of 1850.

*Appeal from a decision of Beneenath Bose, Moonsiff of Maniktollah,
passed on the 8th of December 1849.*

Gunganarain Roy, (Defendant,) Appellant,

versus

Loll Mahomed Moollah, (Plaintiff,) Respondent.

THIS suit was instituted to recover from the defendant 122 rupees, 9 annas, and 1 gundah, balance of account for wood sold to him.

Defendant alleges an adjustment of the account when a balance of 12 rupees was against him, which amount he had refused to pay, and plaintiff had, out of enmity, brought this heavy demand against him. Defendant also urges that throughout their dealings he had given vouchers to plaintiff.

The moonsiff observes that both parties attempt to support their respective assertions by the production of their account books, with witnesses to verify them and give evidence in their favor; that he can place no perfect reliance on the evidence advanced on either side, but as the defendant allows having received from plaintiff a certain quantity of wood at different times, and plaintiff admits having received a certain amount of cash from defendant, he deems it most proper to strike a balance on their admissions, and accordingly decrees to plaintiff the sum of 95 rupees 15 annas, as due to him for the wood, defendant acknowledges the receipt of, after deducting from the value thereof the sum received by plaintiff.

The defendant appeals against this decision, pleading that as plaintiff failed to prove his case by evidence which satisfied the moonsiff, his claim should have been dismissed, and that plaintiff has kept back the vouchers received from defendant, which, if presented, would tell against him.

It appears from a perusal of the papers and evidence that plaintiff is a wholesale dealer in wood, and defendant a retail vendor of the article, who for many years has supplied himself from plaintiff's depôt. They have now a disputed balance of account, and each brings forward his account books and the writers of them to prove his own account the correct one. The moonsiff places no credit on

the books or witnesses of either party, and makes out a balance from the admissions in the pleadings on both sides. This is not a satisfactory way of deciding the point. It appears to me that parties, dealing as these have done for some years with each other, must have had some distinct account of their dealings *open to both*, such as is probably the custom of the trade to keep, and defendant distinctly alleges that *vouchers*, or "haut chittas," were kept and their accounts regularly entered therein. It appears to me therefore necessary to ascertain from disinterested parties engaged in the same line of business what is the custom of the trade in this respect, and if any mode of account open to both parties is always referred to for the settlement of their accounts or not; if such an account is kept, then with whom is it entrusted? or any other particulars which may tend to afford credible evidence of these parties' dealings with each other.

It is therefore ordered, that the case be returned to the moonsiff of Maniktullah, who will make the enquiry pointed out above and again decide the case.

The appellant to receive the stamp fees of this appeal.

THE 6TH MAY 1850.

Case No. 50 of 1849.

Appeal from a decision of Syed Osman Ally Khan, Additional Principal Sudder Ameen, passed on the 30th of July 1849.

Keenoo Luskur, Gholam Gous Luskur, and others, (Defendants,) Appellants,

versus

Surroop Chunder Halidar, (Plaintiff,) Respondent.

SUIT to set aside a decision of the revenue court under Regulation VII. 1799, rejecting plaintiff's claim to rent from defendant.

The circumstances under which this suit was brought by the Government farmer, are similar to those detailed in Nos. 39 and 40, decided on the 26th and 27th of March, tried by this court.

The estate is the same, and the claim of the farmer to the rent he wishes to levy is founded on the jumma bundee there alluded to, and the defendants resist on the plea of having never paid at those rates, and the assistant collector, who tried the summary suit, rejected the claim on the defence set up.

The additional principal sudder ameen has reversed the decision of the revenue court, without going into the merits of the defence, as pointed out by me in the decision of March alluded to above.

I therefore return this case that the additional principal sudder ameen may review his judgment, with reference to the remarks recorded in the decisions of the 26th and 27th March last.

The stamp fees to be returned to appellants.

THE 6TH MAY 1850.

Case No. 55 of 1850.

Appeal from a decision of Baboo Beneemadhub Shome, Moonsiff of Pautterghotta, passed on the 25th of January 1850.

Roghonath Doss, (Plaintiff,) Appellant,

versus

Degumbur Roy and Ramnarain Roy, (Defendants,) Respondents.

PLAINTIFF sued for 28 rupees, amount of a bond, dated the 25th of Chyite, which sum, it was stipulated, should be repaid, with interest, from the produce of 4 beegahs of land, in the ensuing month of Poos. As nothing was paid, the plaintiff sued for the amount lent, foregoing any claim to interest.

The defendants admitted incurring the debt, but averred that they had made over to plaintiff 4 beegahs of land in order that he might reimburse himself for the loan, the profits being reckoned at 7 rupees per annum; that plaintiff kept the land six years without giving any account, when they resumed possession, and plaintiff, knowing they were about to enter an action for the surplus realized by him, had forestalled them by commencing this suit on a false bond, the one he sues upon not being the document they executed.

The moonsiff says, in his decision, that plaintiff brought witnesses to prove the bond, and the circumstances represented by him in his plaint; but the moonsiff considered it improbable that any one would lend money on security of crops, which were not at the time even on the ground, or that plaintiff would have rested content for so many years after defendants had failed to repay their debt from the produce of the land in the month of Poos as stipulated; that moreover, the witnesses of plaintiff are illiterate persons and deposed to having been present when the deed was executed, when a settlement was proposed, and when the money was demanded. The moonsiff, therefore, deeming plaintiff's representation to be improbable and his witnesses persons whose evidence could not be safely relied upon, while defendants had established their case to his satisfaction, dismissed the suit.

The plaintiff has appealed from this, being dissatisfied with the moonsiff's decision, but only repeats the subject matter of his plaint as recorded in the lower court.

I went over the evidence of the witnesses, which is all the proof afforded by either party in support of their several statements. It appears to me most strange and improbable that, if plaintiff really lent this money, as stated by him, on the understanding and pledge that the amount should be liquidated by sale of the crops in the following Poos, and neither sale nor possession of the land took place, nor payment was made in his favor, that he should have done nothing

for nearly nine years towards claiming his money. I doubt much the truth of this statement, and see no reason to interfere with the moon-siff's decision.

THE 8TH MAY 1850.

Case No. 51 of 1849.

Appeal from a decision of Syed Osman Ally, Additional Principal Sudder Ameen, passed on the 7th of August 1849.

Seebnath Bundopadhya, (Defendant,) Appellant,

versus

Samanath Chowdry, (Plaintiff,) and Seebnath Banerjea, Unopoorna Dabee, Chunder Seekur Roy, and others, (former Defendants,) Respondents.

SAMANATH CHOWDRY (plaintiff before the lower court) stated that he purchased 14 beegahs 3 cottahs lakhiraj and khiraj land from Unopoorna, Chunder Seekur, Kalikisto Chowdry, and others, defendants, for 2000 rupees, for which kuballas were executed on the 31st Chyde 1253 B. S., and possession delivered to him on the 5th of Bysack following. On the 14th of the same month, Seebnath Banerjea procured the attachment of 13 beegahs 10 cottahs of this land, in execution of a decree held by him against the parties who sold the land, and, notwithstanding plaintiff's opposition and objections before the courts, the said land was sold in satisfaction of the decree. Plaintiff has therefore recourse to this action to set aside the said sale and recover possession of the property.

The decreeholder Seebnath urged that the private sale had been collusive to defraud him of his dues, by preventing the sale of the property in satisfaction of his decree; that, long previous to the date of this private sale, notification had been issued by the court under Regulation II. 1806, prohibiting any alienation of property on the part of his debtors, and consequently any private transfer of their property was invalid.

The additional principal sudder ameen decreed to plaintiff possession of the property, observing that the sale was only disputed on the grounds of its being *fictitious*, as made in collusion with the debtors of Seebnath, and *invalid*, as being subsequent to a notification, under Regulation II. 1806, prohibiting the debtors alienating any part of their property; but that the notification alluded to was informal, having been issued without proof of any intention on the part of the debtors to alienate, and without demanding security for future satisfaction of the decree; such notification could not therefore invalidate the subsequent sale, and as the kuballa was proved, the purchase of plaintiff must be upheld.

The decreeholder Seebnath Bundopadhya appealed against this decision, urging the issue of the notification, which barred all trans-

fer of property on the part of his debtors, and pleading that the sale was not real, but a collusive transaction to place the land beyond his reach, and prevent his disposing of it in satisfaction of his decree; that the land had never passed from the possession of his debtors.

It is stated that the land now claimed was sold publicly in satisfaction of a decree held by the appellant Seebnath Banerjee against Unopoorna and others. Plaintiff seeks to annul that sale, on the grounds that he had previously purchased the property, and that possession had been delivered to him by the debtors, who consequently, at the time of the public sale, retained no interest in the land. The appellant alleges that such private sale was invalid, all property belonging to his debtors having been sequestered by order of the court under Regulation II. 1806, and that plaintiff's purchase was moreover collusive.

The additional principal sudder ameen observes that the notification under Regulation II. 1806, was issued without *proof* of intention to alienate on the part of the debtors, and without previously requiring security. These omissions he considers vitiate the notification, and prevent its having any effect. Though I do not adopt the reasoning of the lower court, or consider the additional principal sudder ameen was competent to enquire into and decide upon the validity of the *grounds* on which the notification was issued, yet I regard the notification as no bar to any subsequent alienation of property on the part of the debtors, because the notification itself is nothing more than a general prohibition addressed to the debtors, which was hung at the door of their residence, forbidding any sale or transfer of their property, but specifying none in particular, nor was this followed up by any other process or order which could possibly denote any actual sequestration of the land in dispute. It also appears that appellant's decree was passed in 1832, and this general notification taken out in 1835, while the sale to plaintiff did not take place till 1847; it is impossible to regard such a proceeding as this notification as having any force after the lapse of so many years.

With reference to the collusion alleged by appellant as the cause of this transfer of the property, I observe that the sale to plaintiff is recorded on the 31st of Chyte 1253, and the deeds were registered on the 26th and 27th of April 1847, a few days after. Appellant produced three witnesses in the lower court who depose to the property's having remained subsequent to this in the hands of his debtors; but there is nothing whatever to substantiate this evidence. It appears that plaintiff opposed the registration of the deeds, and, almost immediately afterwards, attached the land in execution of his decree. But considering the period which had elapsed since that decree was passed, it is quite unaccountable why appellant did not sooner sue out execution against this property; and his doing so only

after its sale to plaintiff leads me to conclude that the sale was made in good faith, and that appellant proceeded to oppose it to prevent the transfer of the property from the possession of his debtors. There is not a single circumstance connected with this sale which shows bad faith or collusion on the part of the plaintiff: he is not a dependant of the parties selling to him, nor does there appear to be any connection between them which could lead me to presume that the property would be restored or that the parties were acting in collusion with each other. Under these circumstances, I see no reason to interfere with the lower court's decision, restoring the land to the plaintiff, and therefore dismiss the appeal, with costs.

THE 9TH MAY 1850.

Case No. 52 of 1849.

Appeal from a decision of Roy Huru Chunder Ghose Bahadoor, Principal Sudder Ameen, passed on the 14th of August 1849.

Roy Bykauntnath Chowdry and Mahub Chunder Roy, (Plaintiffs,) Appellants,

versus

Bhaggobuttee Dossee, Raja Radhakanth Deb, Prosunnokisto Ghose, and others, (Defendants,) Respondents.

THE plaintiffs instituted this action to recover possession of a ghaut, comprising 1 beegah 5 cottahs, situated in turruff Baystollah, pergunnah Calcutta, alleged to have been leased to them by Bhaggobuttee, adverse possession of which had been taken by the other defendant under a decision of Act IV. 1840. They stated that Bhaggobuttee had granted a lease of the ghaut to Bykauntnath Chowdry, in the name of Madhub Chunder, in perpetuity, at a jumma of 23 rupees 8 annas, on the 14th Maugh 1251 B. S., and they had retained quiet possession of it, having converted it into a mart for the sale of wood and straw; that Radhakanth Deb, entertaining great enmity towards Bykauntnath, prevailed upon Bhaggobuttee to give him another lease of the property, which he procured in the name of Pursunnokisto on the 5th of Poos 1253 B. S., and, having raised a dispute for possession, succeeded in ejecting plaintiff through a decision under Act IV. 1840.

Pursunnokisto replied that the plaintiff's story of getting a pottah from Bhaggobuttee was false, that he held a lease of the ghaut from her after paying a "salamee" of 271 rupees, and that the ghaut was used as a mart for the sale and purchase of fish.

Bhaggobuttee filed an answer in support of defendants' case.

Radhakanth Deb stated, in his reply, that he had no connection with the case.

The principal sudder ameen observes that, although plaintiff filed his pottah and supported it with the kubooleuts of some hucksters

and the evidence of some witnesses, yet Bhaggobuttee not only denied, in her reply, having ever given the pottah, but attended personally in his court and asserted the grantee of the lease to be the defendant. That the Act IV. case shows that, previous to the present dispute, plaintiff had quarrelled with Anundnarain Ghose and stopt the supply of fish at his own ghaut of Chinghreehuttah from going to Anundnarain's bazar, and thereby obliged Anundnarain to establish a fish ghaut at the disputed place, for which purpose it was used by him; a fact which clearly shows that plaintiff could have had no rights or interests in the disputed property. That the principal sudder ameen went to the spot and satisfied himself, by the evidence of parties residing near but not connected with either party; that the ghaut in question had never been used as a mart for straw and wood, but only as a fish ghaut, and as such had always been held by Radhakanth Deb. That moreover the "chittas," produced by plaintiff, were found not to correspond with the localities, and could not be explained by the plaintiff's vakeels or mooktears, who attended at the local enquiry. The principal sudder ameen for this reason dismissed the plaintiff's claim.

The plaintiff has appealed against this decision, urging the injustice of rejecting his pottah on the assertions of Bhaggobuttee, when supported by the evidence of his witnesses, and repeats the substance of his plaint before the lower court.

I observe, however, that the plaintiff had nothing to support his claim, but the pottah he alleges having received from Bhaggobuttee, who denies granting it. Against all the other circumstances urged by plaintiff in his plaint, there are the possession of defendants as shown by the proceedings under Act IV. 1840, and the evidence of the witnesses taken by the principal sudder ameen on the spot to prove the fact of the ghaut having been always held by the defendants for the raja Radakanth Deb, as a fish ghaut; and that it was never converted, as plaintiff alleges, into a wood and straw mart, a fact which the principal sudder ameen likewise supports by stating that there were no appearances of such a trade having ever been carried on there. As the plaintiff appears to have afforded no proof of his claim, I see no reason to interfere with the order of the lower court, and therefore dismiss this appeal, with costs.

THE 10TH MAY 1850.

Case No. 53 of 1849.

Appeal from a decision of Roy Huru Chunder Ghose Bahadoor, Principal Sudder Ameen, passed on the 11th of August 1849.

Moonshee Fuzlull Kurreem and Buzlull Ruheem, (Plaintiffs,) Appellants,

versus

Commissioner of Sunderbuns on the part of Government, William McDermott, Mohun Chund Ghose, Tarachund Ghose, and others, (Defendants,) Respondents.

SUIT for possession of 500 beegahs of land, with profits, valued at 4560-14-1.

The plaintiffs stated that the above mentioned land belonged to their estate in mouzah Goordhah, and had been leased out by them, but the holder, having set up a plea of its being part of a Soonderbuns lot No. 72, had refused to pay rent; that plaintiffs sued him summarily, but the case did not come to a hearing, and they now instituted this action to recover possession.

The substance of the defence was that the land in question is included in lot No. 72 of the Soonderbuns, which lot was granted to Captain Passmore by Government; that plaintiff's father at one time laid claim to the whole lot as appertaining to his zemindarry, which claim was tried and dismissed and the order confirmed on appeal, consequently plaintiffs have no right to bring this action.

The principal sudder ameen dismissed plaintiff's claim, on the ground that the map of lot 72 prepared by Captain Prinsep (copy of which was filed, and authenticated by Mr. Mullins), shows that the eastern boundary of the lot is the Syalda Khall and the southern the lands of mouzah Basra; that the lands in dispute are stated by plaintiff's witnesses to be bounded on the east by the Syalda Khall, and on the south by the Basra lands, which position throws the site of their lands within the line of the Soonderbuns as drawn in Prinsep's survey, and consequently within lot No. 72, making their lands identical with those for possession of which plaintiff's father brought a claim which was rejected, and the principal sudder ameen therefore dismissed the present suit.

The plaintiffs appeal, and urge that the lands they claim have been usurped by the Government grantee, that they lie between the lands of Basra and the Soonderbuns grant No. 72, and appertain to mouzah Goordhah included within their zemindarry, and that the cultivator gave them a kuboulent.

I observe that the survey map makes no mention of any lands between the Basra lands and the Soonderbuns grant No. 72. The lands of Basra form the southern boundary of the lot and apparently comprise between 5 and 600 beegahs. Did the lands of Goordhah, as alleged, lie between Basra and the Soonderbuns to the extent of 500

beegahs, the surveyor could not have failed to note and mark them in the map. The map, however, though tested and found to be correct by Mr. Dampier with reference to these lands of mouzah Goordhah, does not allow for their existence in the site and position alleged by plaintiffs; and the only conclusion I can come to is that the lands claimed are a part of lot No. 72, and that they have been rightly so regarded by the lower court. I see no reason therefore to interfere with the principal sudder ameen's decision, and dismiss this appeal.

THE 13TH MAY 1850.

Case No. 54 of 1849.

Appeal from a decision of Moulvee Syud Osman Ally, Additional Principal Sudder Ameen, passed on the 24th of August 1849.

Ram Chunder Mitter, (Plaintiff,) Appellant,

versus

Muddoosooden Mitter and others, (Defendants,) Respondents.

PLAINTIFF sued to recover from Muddoosooden Mitter 5 beegahs 19 cottahs of land, which had been sold to him by one Kallicomul Mookerjee, who derived his title from Rammohun Ghose, from the possession of which plaintiff had been ejected by the said Muddoosooden.

Muddoosooden denied plaintiff's right to the land, or his possession of it at any time, and alleged that it was included in certain property he purchased, possession of which had been procured through the courts.

The additional principal sudder ameen dismissed the suit, on the grounds that plaintiff had not taken measures to procure the attendance of his witnesses and had therefore failed to prove his case.

The plaintiff urges, in appeal, that only three of his witnesses to the deed of sale are still alive, of these one was too sick to attend at court, and two were absent in another part of the country, and that the additional principal sudder ameen had not directed any local enquiry regarding his possession of the disputed land.

On referring to the record I find that plaintiff named nineteen witnesses and cited fourteen, subpoenas were served upon six, and the others were reported to be dead, two were brought up and examined, and only one gave evidence in favor of plaintiff's claim. On the 11th July, the additional principal sudder ameen directed the vakeel to inform his client (the plaintiff) of the necessity of some one stating on oath that the evidences of the absent witnesses were material, but no further steps were taken, and on the 24th of August the vakeel represented that his client had not proceeded on the court's suggestion: the case was then taken up in its turn, and decided.

I see no reason to interfere with the judgment of the lower court, and therefore dismiss the appeal. It was clearly incumbent on plaintiff to prove his title before any local enquiry became necessary.

THE 13TH MAY 1850.

Case No. 54 of 1850.

Appeal from a decision of Mr. Wright, Sudder Moonsiff, passed on the 16th January 1850.

Ramdhone Ghosaul, (Plaintiff,) Appellant,

versus

Sumbhoo, (Defendant,) Respondent.

To recover the sum of rupees 55, 13 gundahs, 2 cowrees.

Plaintiff stated that he lent defendant 35 rupees in Falgoon 1249 B. S., who executed a bond, stipulating to repay the loan, with interest, in Falgoon 1250 B. S., that defendant had only paid 6 rupees, and this action was brought for the amount still due.

Defendant denied the debt *in toto*, and alleged that the action was brought at the instigation of his enemy, one named Cassinath.

The moonsiff observes that the bond seems to him to be spurious, though two witnesses on the part of plaintiff deposed to the contrary. His reasons are the fresh appearance of the writing, and "that the line of the text written on the crease has actually run." "The payments also at the back of the bond appear fresh," and the moonsiff thinks that plaintiff would not have rested satisfied "with the two paltry" payments made at intervals, but would have sued long ago for the sum due to him. He therefore dismissed the claim.

The plaintiff appeals, urging that his witnesses proved his case, and that the moonsiff's inferences regarding the bond are groundless.

This case has been dismissed by the moonsiff, on the grounds that the writing of the bond and of the payments endorsed on it, appear fresh, and the line of the text on the crease of the paper to have run, and that plaintiff would not have remained satisfied with such small payments, but would have sooner sued for his money. The bond is of such recent date that these evidentiary facts standing alone, are not self-convincing, and a judgment based upon them is unsatisfactory. The plaintiff has, moreover, adduced witnesses in his favor, whose evidence the moonsiff does not allude to, but from the context of his decision it appears he did not deem them worthy of credit. The reasons for disbelieving them should be explained, as their depositions, as recorded, are neither improbable nor contradictory. I therefore reverse this decision, and return the

case to the moonsiff: he will give his reasons for disregarding the evidence of the witnesses, and whether it merely proceeded from the suspicious appearance of the bond or from other circumstances.

The stamp fees to be returned to appellants.

THE 13TH MAY 1850.

Case No. 110 of 1850.

Appeal from a decision of Mr. Weston, late Sudder Moonsiff, passed on the 21st September 1847.

Nujeeboollah Bheestee, (Defendant,) Appellant,

versus

Hullothur Mitter, (Plaintiff,) Respondent.

PLAINTIFF sued for amount of a bond, principal and interest, rupees 25-14-14, dated 17th Chyete 1248 B. S.

The moonsiff gave an *ex parte* decree, the defendant having failed to appear after service of notice at the time duly certified.

The appellant, after execution of the above decree had been sued out against him, appeared before the court in conformity with Clause 8, Section 15, Regulation XXVI. 1814, and urged that no notice of the institution of the suit had been regularly served upon him. An enquiry on this point was directed to be held by the moonsiff, who, on the 16th March 1850, drew up a proceeding to the effect that the notice and proclamation had not been served at appellant's place of residence, and that he was entitled to appeal against the decree given *ex parte* against him.

On these grounds the appellant has filed his appeal, and under the Section and Regulation quoted above, I reverse the *ex parte* decree passed by the moonsiff on the 21st September 1847, and direct this case to be refiled by the sudder moonsiff, and appellant's answer and proofs to be received to the original plaint, and the suit decided *de novo*. Stamp fees to be returned.

THE 15TH MAY 1850.

Case No. 55 of 1849.

Appeal from a decision of Roy Huru Chunder Ghose, Principal Sudder Ameen, passed on the 16th August 1849.

Bhujokisten Ghose, (Plaintiff,) Appellant,

versus

Puddo Dasse (younger) and Puddo Dasse (elder), widows of Joynarain Bazal, (Defendants,) Respondents.

THE plaint sets forth that, on the 21st Bhadro 1248 B. S., Joynarain Bazal, the late husband of the defendants, borrowed from

Muddunmohun Ghose, plaintiff's father, (deceased,) the sum of 500 rupees, mortgaging as security, by a deed of conditional sale, 7 beegahs, 10 cottahs, 1½ chittacks of land, with brick dwelling house and orchard thereon. The terms of the mortgage were, that if the money was not repaid in two years the sale should become absolute. The original title deeds were also lodged with the mortgagee. At the expiration of the term, the usual notice was issued under Regulation XVII. 1806, and the sale having now become absolute, and the original mortgager having died, this action was brought for possession of the property in the name of his widows.

The younger widow, Puddo Dasee, defended the suit: the other widow only filed a reply to the effect that she knew nothing of the mortgage. The former stated that Joynarain Bazal had never borrowed the money or mortgaged the land as stated, that the plaintiff is the son-in-law of the co-wife, Puddo Dasee, with whom defendant is at enmity, and this action has been brought upon a fictitious mortgage with the view of depriving defendant of her share of her husband's property, that her husband died in affluent circumstances.

The principal sudder ameen first took exception to the mortgage deed, which he describes as engrossed upon stamp paper used only in the courts for petitions and plaints, and never purchased for deeds or documents, that the stamp paper was sold in Calcutta, and not at the place where the parties reside, and the date of its sale is 23 days prior to the date of the mortgage. These circumstances led the principal sudder ameen to suspect the mortgage deed, and to infer that plaintiff had been obliged to purchase stamp paper of a certain date with the intention of preparing this document. He next remarks as singular that the deed was not prepared at the house of either party to it, but at a shop, and that all the attesting witnesses are relatives of the plaintiff, and appeared to him to have been tutored to give evidence, that moreover the plaintiff had concealed in his plaint the fact of his being the son-in-law of one of the widows, Puddo Dasee, the elder, but subsequently admitted it, and also that enmity existed between the widows, and that Puddo Dasee, the younger, had in consequence of it actually left her deceased husband's house and gone to reside with her father. That it appeared from the account books of Ramnarain Shaw, the authenticity and integrity of which had been proved in another case, that a sum of 1233 rupees was credited therein to Joynarain Bazal, who could not therefore have been in want, and was not likely to have borrowed money and mortgaged his dwelling house for no apparent object. It was also ascertained by the principal sudder ameen from the documents before him, that Joynarain Bazal had offered his property (including the land now sued for) as security two years *after* this alleged conditional sale, at which time he presented *his title-deeds* for inspection, and, on the security being approved, these deeds were returned to him. At this time, notification was given in the

mofofussil of his intention to pledge his property, but plaintiff never offered any objection; and from these facts, the principal sudder ameen infers there can be little doubt that plaintiff has subsequently procured these title deeds through the collusion and instrumentality of his mother-in-law, the elder widow. Other circumstances are detailed by the principal sudder ameen, all tending to the same conclusion, namely, that the debt and mortgage are gross fabrications got up by plaintiff in collusion with the elder widow, and that they have attempted to carry them out to deprive the other widow of her share in the property. The principal sudder ameen for the above reasons dismissed plaintiff's claim.

Plaintiff, in appealing from this decision, has urged only the most vague and frivolous pleas, some quite irrelevant, and none meeting or refuting the arguments and inferences of the lower court.

I consider the principal sudder ameen has most completely exposed the fraud and artifices of the plaintiff. His investigation is full and complete. The facts he adduces so convincing and the inferences he draws from them so just and appropriate that it is impossible, I think, to entertain any other opinion than that plaintiff has attempted to impose upon the court a fictitious claim and with a malicious object. I am also of opinion that he has rendered this proceeding still more harassing and vexatious to the party sued, by preferring this appeal without the slightest reason, and after the investigation of the lower court had completely exposed his infamous schemes and intentions. Litigation like this can only have for its object the worst of motives, and I therefore fine the appellant (plaintiff) one hundred and fifty rupees under Section 3, Regulation XV. 1796, and the nazir will be directed to realise it. The lower court's order is confirmed, and the costs of respondent in this suit to be charged to appellant.

THE 16TH MAY 1850.

Case No. 112 of 1850.

Appeal from a decision of Mr. Wright, Sudder Moonsiff, passed on the 13th March 1850.

Beelashee Debeeaa, (Defendant,) Appellant,

versus

Surroop Chunder Udheekaree, (Plaintiff,) Respondent.

THE plaintiff stated the land he claimed had fallen to his share on division of his father's property, and that defendant had dispossessed him on the 4th Ughrun 1255 B. S., by carrying off the cocoanuts growing on a tree on the land sued for; that he had instituted a suit under Act IV. 1840 for repossession, but the magistrate would not interfere in his favor. The land was estimated to comprise 2 chittacks.

Defendant denied having ever dispossessed plaintiff, and asserted that the land was her own.

The moonsiff states that the dispute resolved itself into a simple question of fact, both parties admitting that a straight line drawn from a certain point would mark the boundaries between their respective properties, to the east of which plaintiff's would lie, and to the west, defendant's. That accordingly a line was so drawn by stretching a rope, and the disputed cocoanut tree fell within the plaintiff's portion, and, with such of the disputed ground as lay on the east side of the rope, was decreed to plaintiff.

Against this decision defendant has appealed, urging that the rope was not run due south: had it, the tree would have fallen to the west of it, and that the boundary drawn by the moonsiff has given plaintiff more ground than he claimed.

This suit is clearly a boundary line dispute. Plaintiff and defendant are neighbours, and their property adjoins without any discernible boundary line having been marked out. They both agreed before the moonsiff, who visited the spot, that if a line was drawn directly south in extension of the partition wall between their houses, it would define their respective properties throughout their extent. In compliance with these statements, the moonsiff carried a line by means of a rope as correctly as he could due south of the end of their partition wall, and found that the tree in dispute and a certain portion of land in possession of defendant, lay on the eastern or plaintiff's side of this boundary mark. This he decreed to plaintiff. The plea now set up by the defendant in her appeal, that this line is not correct and inclines too much to the east, cannot be attended to, as I am bound to suppose that the moonsiff took every just and proper precaution to make a fair boundary line on the data laid down by both parties. I therefore refuse to interfere with his decision on the sole apparent grounds of appellant's dissatisfaction. The moonsiff has explained in his decision why the ground in one place is a little in excess of plaintiff's claim, namely, that he spoke of it indefinitely. I therefore confirm the moonsiff's decision, and dismiss this appeal.

THE 22ND MAY 1850.

Case No. 56 of 1849.

Appeal from a decision of Roy Huru Chunder Ghose, Principal Sudder Ameen passed on the 2nd November 1849.

Joynarain Bose, (Plaintiff,) Appellant,

versus

Hurukally Mookerjee, (Defendant,) Respondent.

THE plaintiff (appellant) brought this action to enhance the rent of the defendant's lands, as auction purchaser, after issue of notice under Sections 9 and 10 of Regulation V. 1812.

Defendant alleged that the lands held by him had been granted to one Moollah Mojeeboodeen, (since purchased by him,) under a sunnud from the revenue council, dated 17th of February 1774, according to which the rent was fixed in perpetuity at 10 annas Sicca per beegah, at which rate he has continued to hold it.

The principal sudder ameen decides, first, that the lands on which enhanced rent is claimed, is proved by the witnesses to be identical with the lands of the sunnud granted to Mojeeboodeen, that the copy of a letter filed, shows that the revenue council had authority to grant such sunnuds, and that the sunnud itself is filed, and the jummaabundee papers of 1190 B. S. show the quantity of land held in accordance with its provision, namely, at 10 annas Sicca per beegah in that year, which quantity of land so nearly corresponds with that now occupied and in the possession of defendant that the principal sudder ameen entertains no doubt it was all protected by the sunnud, and therefore only decreed to plaintiff the rent at the rates admitted by the defendant.

On referring to the sunnud, I observe that no quantity of land is specified in it, and that the principal sudder ameen has decided in defendant's favor entirely on the presumption that the sunnud is genuine, and that defendant's lands are held under it. The sunnud records on the face of it that it was registered in the revenue office under the number given. I consider defendant is bound to prove that this document was so registered, for, without proof of this formality, no reliance can be placed upon its genuineness. I therefore return this case that the principal sudder ameen may require defendant to prove that this sunnud was registered in the office, and then decide the case.

The stamp fees to be returned to appellant.

THE 23RD MAY 1850.

Case No. 60 of 1849.

Appeal from a decision of Baboo Rajmohun Mitter, Moonsiff of Buscheerhaut, passed on the 30th July 1849.

Putoo Mundull, (Plaintiff,) Appellant,

versus

Jungle Mundull, deceased, and after his death Samud Mundull and Bhanoo Mundull, (Defendants,) Respondents.

THE plaintiff stated that Jungle Mundull, on the 22nd of Bysack 1252 B. S., executed a bond for 9 rupees, 8 annas, promising to repay the same with interest in the following Bhadro and Poos.

Jungle admitted execution of the bond as stated, but alleged having given up to plaintiff 2 beegahs 10 cottahs of dhan land, from the produce of which the debt has been more than liquidated, and that a dispute having occurred about the balance, plaintiff had forestalled him by bringing this action.

Plaintiff admitted possession of Junglee's land, but averred that he took it on condition of making over to defendants one-half of the produce, but this arrangement had nothing to do with the debt, and that he had yearly given defendants the stipulated share.

The moonsiff called upon plaintiff to prove the bond and on defendants to prove plaintiff's possession of his land and that the produce had liquidated the debt. The moonsiff, on the evidence adduced by the defendants regarding the possession of the land and the value of the produce received from it by plaintiff, dismissed the claim.

The plaintiff urges, in appeal, that had he, as alleged, taken the land as a means of realising the debt, such an arrangement would have been in writing, and that a settlement of accounts would have taken place yearly, and the value of the produce received by him have been carried to defendant's credit at the back of the bond. That the amount of the bond was less than 10 rupees, and the produce of the land such that a debt of that amount would have been realised in one year, how then has defendant allowed the land to remain at his disposal for three years if he never received any share of the yearly produce of it?

The issues tried in this case have been unnecessarily long. The only point to look to, is whether plaintiff has realised his debt from the land. He acknowledges the value of the produce was more than sufficient for this purpose, and he has failed to show that he ever made over any part of it to defendants. The objections urged by him can avail him nothing, as it is well known that arrangements of this nature for the liquidation of a debt are seldom if ever guarded by the formalities of deeds. I therefore regard defendant's defence as a set-off in the shape of payments made, and it was for plaintiff to show that, having taken the land placed at his disposal, the produce of it had been duly made over to defendant. This he has entirely failed in, and I therefore confirm the decision of the lower court.

THE 23RD MAY 1850.

Case No. 61 of 1850.

Appeal from a decision of Baboo Beneemadhub Shome, Moonsiff of Pauterghotta, passed on the 23rd of January 1850.

Sumbhoo Mundul and others, (Defendants,) Appellants,

versus

Rajkistno Pramanyk, (Plaintiff,) Respondent.

THE plaintiff sued for the hire of a canoe let out to defendants at 1 rupee per month from 15th Assin 1252 to 1st Falgoon 1255 B. S., and for recovery of the canoe. The hire amounted to

rupees 35-8, after deducting 8 annas received, and the value of the canoe to 20 rupees.

Defendants admitted the hire of the canoe for part of the alleged period, but averred payment of the hire and return of the boat.

The moonsiff states that plaintiff's witnesses proved his statement, and also that defendants had offered to compromise the matter and return the boat. The defendants brought up no witnesses and took no steps to procure their attendance. That a local enquiry made by his order, showed that the defendants had underlet the canoe since Kartick 1255, and that it was sold for defendants' father's debt, had been purchased by Neelmonee Sirkar, and was still owned by him. Under these circumstances the moonsiff gave plaintiff a decree.

The defendants urge the same defence pleaded in the lower court, and that they were unable to get up their witnesses in consequence of the gomashtha's enmity, that he was now turned off, and, if permitted, the witnesses could be brought forward.

It appears that defendants took no steps to procure the attendance of their witnesses before the lower court, after service of subpoenas on some of them, though warned by the court to take the necessary steps to enforce their attendance. The only notice taken by the defendants on this score consisted in a representation on their part to the court, intimating that they would have their witnesses ready in a week's time. In this they failed, and their vakeel informed the moonsiff that his clients paid no attention to his repeated calls upon them to send in their witnesses. Under these circumstances, the moonsiff's decision of the case on the evidence placed before him seems to me to have been proper; and as that evidence was sufficient to establish plaintiff's claim, I see no reason for interfering with the proceedings of the lower court, and therefore dismiss this appeal without summoning the respondent.



ZILLAH BACKERGUNGE.

PRESENT: W. J. H. MONEY, Esq., JUDGE.

THE 2ND APRIL 1850.

No. 32 of 1847.

Appeal from the decision of Moulvee Mahomed Kulleen, Principal Sudder Ameen, dated the 13th March 1847.

Mahomed Idrak and Azeezmoonissa, (Defendants,) Appellants,

versus

Neelamunnee Mittre, (Plaintiff,) Respondent.

THIS suit was instituted to recover from the defendants the sum of Company's Rupees 527, anna 1, krants 16, principal and interest, due as rent on account of a howla and talook called Sumbolochun Dutt, assessed at a jumma of 25 rupees Sicca according to their tahood, situated in Ramna Joar in the 4 annas and 2 annas, 7 gundahs, 2 cowrees subdivided and purchased shares of pergunnah Shahzad-pore.

The defendants denied the claim and the tahood alluded to, and observed that the plaintiff's share consisted of a 2 annas, 10 gundahs, 1 cowree share, being a subdivision of the 5 annas 10 gundahs share, and also a 4 gundahs 1 cowree share, in all a 2 annas, 14 gundahs, 2 cowrees share; that the entire jumma of the talook was rupees 75, which, with reference to the plaintiff's share, would give him rupees 12, annas 12, gundahs 16, cowrees 3, cags 2, Sicca.

The plaintiff, in his replication, remarked that his ancestor Ram Narain Mittre always received a jumma of 25 rupees Sicca for his share, upon the strength of a tahood signed by Sumbolochun, dated the 27th Sawun 1209, from whose heirs the defendant Idrak derived the talook in question.

Rammalla, wife of Sumbolochun Dutt, denied the jumma as stated by the plaintiff, and claimed a 4 annas share in the talook.

The principal sudder ameen, with reference to the former summary decision under Regulation VII. 1799, the tahood, the jumma-wasil-bakee accounts, and other evidence adduced by the plaintiff, considered it clearly established that the sum of 25 rupees Sicca had always been paid to the ancestor of the plaintiff; and as the rent was still due, he gave a decree for the principal rent, namely, 25 Sicca rupees, 5 annas, 15 gundahs, 2 cowrees, from the 19th Sawun

to the year 1254, and interest to the day prior to the decree, Sicca rupees 220, annas 9, gundahs 11, cowrees 2, in all Sicca rupees 512, annas 16, gundahs 15, or Sicca rupees 547, annas 2, pie 8, and costs against Idrak, Azeemoonissa, Asuffoonissa, and Ameerooddeen, who were in possession, releasing the other defendant, intimating at the same time that his order did not affect the proprietary rights of any party.

The appellants reiterated their objections, and observed that the tahood, alluded to by the principal sudder ameen, had never been attested in any court.

The respondent referred to his bycnamahs, in which the jumma, representing the shares mentioned by him, corresponded with the jumma recorded in the collectorate.

No documentary evidence has been adduced by the appellants in refutation of the amount of jumma claimed by the respondent, and these objections regarding the shares are without weight, for the jumma comprised in the certificate of purchase in the possession of the respondent, and that recorded in the collectorate, are the same, the only difference being that the shares mentioned by the respondent were subdivided portions.

I see no reason therefore to disturb the decision of the principal sudder ameen, which is confirmed, and the appeal dismissed, with costs.

THE 2ND APRIL 1850.

No. 5 of 1847.

Original Suit.

Neelmunnee Mittre, Plaintiff,

versus

Mahomed Idrak, Ameerooddeen, Azeemoonissa Khanum, and Asuffoonissa Khanum, wife of Mahomed Kulleem, Defendants.

THIS suit was instituted to recover the sum of 25 rupees Sicca, or Company's rupees 26-10-8, rent for the year 1253. This case is precisely similar to the preceding one No. 32, and so are the objections urged: the same order is therefore applicable. The claim is decreed, with interest and costs against the defendants, and interest to the date of payment.

THE 5TH APRIL 1850.

No. 48 of 1847.

*Appeal from the decision of Moulvee Mahomed Kulleem, Principal
Sudder Ameen, dated the 19th May 1847.*

Osman, Mahomed Ukbur, and Mahomed Alif, (Defendants,) Appellants,

Goluk Chunder Sha, (Plaintiff,) Respondent.

THE plaintiff sued to recover the sum of Company's rupees 514, 7 annas, 7 pie, and reverse a summary decision of the collector under Regulation VII. 1799. He represented that there was a howla called Mahomed Tukkee and Mahomed Hossein, connected with the 12 annas share of his putnee talook in kismut Ramna, joar Ramna, pergunnah Buzoorgomedpore, which was sold in execution of his decree for rent in the month of Bhadoon 1247, the jumma of which up to the year 1248, according to the former rates, was Company's rupees 124 10 annas, and for the years 1249 and 1250, Company's rupees 218 12 annas, being at the rate of 4 annas per kance, under the sanction of the Soonderbuns commissioner, and for the year 1251, Company's rupees 193 2 annas, at the rate of 3 rupees 10 annas per kance: that the whole of the rent for the year 1248 being due, and for 1249, the sum of rupees 173 4 annas, and for the year 1250, the sum of 175 rupees being paid to the suzawal, he reserved the realization of these balances for a regular suit, and sued the purchasers of the howla for the rent of the year 1251 under Regulation VII. 1799, namely, the principal 193 rupees, 2 annas, 3 pie, and interest 7 rupees, 2 annas, 1 pie, in all Company's rupees 200, 4 annas, 4 pie: that the defendant, who was in attendance, was unable to produce before the deputy collector any proof of payment, and he therefore gained a decree, which was upset in appeal by the collector, before whom the defendant purchaser produced false receipts in refutation of his claim: that he sues therefore to reverse that summary decree of the collector, and obtain the rent he claimed, as well as former balances due from the former occupants and the purchaser of the howla, namely, for the year 1248 the whole rent Company's rupees 124 10 annas, and for the years 1249 and 1250 the amount due, after deducting the collections abovementioned, that is, 45 rupees 8 annas, and 43 rupees 12 annas.

Osman repudiated all responsibility for the balance prior to his purchase in the month of Bhadoon 1249; and observed that up to the year 1250 the collections had been made by the suzawal Kashcenath, and for the year 1250 he had paid the rent, as would be proved by the various receipts in his possession: he asserted, moreover, that the rate of 4 annas per kance for the years 1249 and 1250 was

quite erroneous, for by the order of the Soonderbuns' commissioner the rate had been fixed at 3 rupees 10 annas per kanee.

The plaintiff, in his replication, alluded to the responsibility of the purchaser for former balances, and to his claim being exclusive of the payments made to the suzawal, and he insisted upon the rate per kanee mentioned by him as the correct standard, namely, for the years 1249 and 1250 3 rupees for his talook, and 4 rupees for his howla rent, and subsequently for 1250, 2 rupees 10 annas for the talook, and 3 rupees for the howla rent.

Mahomed Ukbar and Mahomed Alif, the former occupants of the howla, denied the existence of any balance, and produced receipts in support of their denial.

The principal sudder ameen, with reference to his decision, dated the 19th February 1846, and a copy of the Soonderbuns' commissioner's proceeding, dated the 27th January 1844, was of opinion that the rate for the howla land was so fixed at 3 rupees 10 annas per kanee from the year 1249, and discrediting the receipts of Osman defendant for the rent said to have been paid for the year 1251, and the receipts of Mahomed Ukbar and Mahomed Alif for the year 1248, in consequence of their suspicious appearance and the unsatisfactory nature of the oral evidence adduced, he reversed the summary decree of the collector, dated the 16th August 1848, and decreed to the plaintiff rupees 198 annas 14, principal and interest, against Mahomed Ukbar and Mahomed Alif, the former howladars, and their heirs, for the rent of the year 1248, and the sum of rupees 310, 3 annas, 7 pie, principal and interest against Osman, for the years 1249, 1250, and 1251, and costs and interest.

The appellants reiterate their former pleas, both as regards the receipts in their possession, and the absence of credit for the sums realized by the suzawal.

As the respondent received the amount of his due from the howla up to the year 1247, by means of the suit, which he instituted, and the sale which was the result of that measure, it is unaccountable how the former howladars could hold receipts for payment said to have been made by them for the year 1248: and with respect to the balances for the year 1249, 1250, and 1251, claimable from Osman, appellant, the purchaser of the howla, I cannot find in the accounts of the suzawal received from the collectorate, that he collected any sum for the years 1249 and 1250, in excess of which the plaintiff has deducted in his plaint, and as the receipts for the year 1251 were never produced in the first instance before the deputy collector in the summary suit, their subsequent production in appeal before the collector, without any valid reason for not producing them before, is certainly suspicious.

I see no reason therefore to disturb the decision of the principal sudder ameen, which is confirmed, and the appeal dismissed, with costs.

THE 12TH APRIL 1850.

Original Suit.

Doorgapershad Doss, Kashee Chunder Doss, Tarachand Doss, and Gourmonee, Plaintiffs,

versus

Ranee Golab Debee, wife of Dulsing Bahoo, deceased, Cazeer Ameenooddeen Ahmud, Meer Golam Hosseinen, Futtik Chunder Doss, and Ranee Mouglah Debee, daughter of Dulsing Bahoo, mother of Ramkishan Baboo, adopted minor, Defendants.

THIS suit was instituted by the plaintiffs to reverse the sale of their share of a talook, and obtain possession, with mesne profits, laying their damages at rupees 9,948. They represented that in the 1 anna, 17 gundahs, 1 cowree, 2 kraunts share of pergunnah Chunder Deep, the property of Ranee Golab Debee, in kismut Lukkeepossa and other kismuts, they had an hereditary talook called Kishan Ram Doss, created long before the decennial settlement, assessed at a jumna of rupees 429, 2 dhoons, 3 gundahs, Sicca, of which a 13 annas, 6 gundahs, 2 cowrees, 2 kraunts share belonged to them, and a 2 annas, 13 gundahs, 1 cowree, 1 kraunt share to Sudaseeb Doss, the father of Futtik Chunder Doss, defendant: that Ranee Golab Debee, having obtained a decree against them and others, for the rent of the talook from the year 1234 to the month of Aughun 1241, the 13 annas, 6 gundahs, 2 cowrees, 2 kraunts share of the talook (the 2 annas, 13 gundahs, 1 cowree, 1 kraunt share the property of Sudaseeb having been previously sold in execution of another decree) was sold by the collector, under instructions of the civil court, in conformity with Regulation I. 1820, on the 16th January 1837, without any application to the commissioner of revenue, and without the usual notice being issued, and purchased by the defendant Cazeer Ameenooddeen Ahmud, for rupees 2,205, of which a portion, according to his statement, was disposed of to Golam Hosseinen: that this sale had taken place in contravention of Section 4, Regulation VII. 1825, which requires a lotbunder to be prepared by the court and an application to the commissioner for the sale of the debtor's property: that although the sale proceeding and sale certificate alluded to the sale having been held under Regulation I. 1820, and Section 16, Regulation VII. 1832, these enactments had reference to putnee talooks sold under Regulation VIII. 1819, and not to the sale of a talook created prior to the decennial settlement in execution of a decree in a regular suit: that as Sudaseeb Doss's 2 annas, 13 gundahs, 1 cowree, 1 kraunt share had been previously disposed of and purchased by Cazeer Ameenooddeen, he had no remaining right or interest in the talook, and therefore, when the sale under remark took place a long time afterwards with the distinct mention of the rights of Sudaseeb Doss, the purchase

on the part of Cazee Ameenooddeen, was irregular: that, Ranee Golab Debee's decree was against Sudaseeb Doss, Doorgapershad Doss, Kashee Chunder, and Gourmonee, as wife of Sumboo Chunder and as guardian of Tarachand, but in the proceeding sent from the civil court to the collector to execute the sale the names of Gourmonee and Doorgapershad Doss were omitted: that the notice was not issued according to law: and the ranee's decree being against the entire talook, the sale of their 13 annas, 6 gundahs, 2 cowrees, 2 kraunts share, for the realization of the entire decree and representing it as the estate in balance, was erroneous.

Cazee Ameenooddeen and Golam Hosseinen replied to the effect that after Ranee Golab Debee had gained her decree, the plaintiff and Doyamoyee, wife of Sudaseeb Doss, deceased, and mother of Futik Chunder Doss and Mohesh Chunder Doss, who was then a minor, and Rammalla, wife of Ram Soonder Doss, paid part of the balance, and made an arrangement with the ranee to pay the remainder by instalments, and agreed that, if these conditions were not fulfilled, their talook might be sold to realize the balance, and they would offer no objections: that, as the money was not paid, a proceeding was sent at the ranee's request to the collector without any reference to the commissioner, under the provisions of Section 16, Regulation VII. 1832, and Construction No. 921, and a letter of the Sudder Court, dated the 25th May 1832, and the collector, after issuing the usual notice, sold the share of the talook in question, which was purchased by Cazee Ameenooddeen, with whom afterwards Golam Hosseinen was united as a sharer: that the plaintiffs and their sharers urged no summary objection to the sale under Clause 3, Section 3, and Clause 1, Section 5, Regulation VII. 1825, but, in fact, gave them kubooleuts and tahoods according to which the rent had been realized: they quoted a proceeding of the judge of this district of the 16th February 1838, to show that this sale and many other sales of a similar kind had been conducted according to Regulation I. 1820, under the terms of the letter abovementioned and in conformity with the custom of the district, and alluded to the petition of Ram Coomar Dutt against a sale of this nature, which was rejected by the Sudder Court on the 24th March 1838, and also to the case of Rammalla *versus* Mahomed Edrak and others, which was dismissed in the principal sudder ameen's court: that Moylvee Toofail Ahmud and Kassessur Doss, vakeels of this court, had caused two bonds to be registered in the name of their respective mothers under the pretence of having lent the plaintiffs the sum of rupees 8,300, and after the expiration of 11 years, 5 months and 19 days had got up this suit through the plaintiffs at their own expense: that, as the plaintiffs were in no way connected with these vakeels, it was unaccountable why they should borrow so large a sum except for the purpose of making them sharers in this suit, and further a condition was entered in the bonds, contrary to the usual custom, to

the effect that the plaintiffs would not alienate any property they might possess hereafter until the loan was liquidated: that the vakeels had never lent money, and in fact Kassessur Doss, vakeel, was himself deeply involved, and therefore the defendants contended that under the precedents, namely, the case of "Zuhooroonnissa" and "Meheroonnissa" and other cases, the plaint was irregular. With respect to the previous sale of Sudaseeb's share, and as alleged by the plaintiffs his retaining no longer any interest in the talook, they observed that there was no butwarra and consequently no specification of shares, as would be seen from the ranee's plaint and decree, and a petition of the plaintiffs and Sudaseeb's wife, Doyamoyee, dated the 6th February 1836: that although the 2 annas, 13 gundahs, 1 cowree, 1 kraunt share had been previously sold, yet at the ranee's request the sale proceeds had been attached under the judge's order dated the 9th September 1836, and therefore the subsequent sale of the 13 annas, 6 gundahs, 2 cowrees, 2 kraunts share could not be considered irregular: that the names of Gourmunee and Doorgapershad Doss were duly recorded in the judge's and collector's proceedings, and the notice issued according to custom: and if Sudaseeb retained no interest in the 13 annas, 6 gundahs, 2 cowrees, 2 kraunts share of the talook, it was strange that the plaintiffs should have included his son, Futik Chunder Doss, a defendant in the suit.

The plaintiffs, in their replication, observed that the Regulation and Construction and letter mentioned by the defendants had reference to putnee mehals and sales in execution of summary decrees: that there was no circular letter of the Sudder Court of the 25th May 1832, regarding sales, though there was a letter of that date to the address of the judge, having special reference to the sales in summary decrees: and no sale of an estate in execution of a decree in a regular suit could take place except under Section 2, Regulation XLV. 1793, and Section 3, Clause 4, Regulation VII. 1825, after a reference to the commissioner, and this was explained in Constructions No. 349 and No. 897, and the principle laid down in a recent decision of the Sudder Court, dated the 31st January 1848 in the case of the Bengal Indigo Company: that even if the petition and instalment had been arranged as mentioned by the defendants, they could be of no avail in a sale conducted in opposition to the law, and the mere omission to urge an objection one month after the sale could not be a bar to the institution of a regular suit: they denied having given any tahood or rent, nor had the defendants mentioned the particular date or the extent of land or the amount of the jumana or the number of the tahoods: that although some sales had taken place in execution of decrees in a regular suit for former balances of rent without application to the commissioner of revenue, yet many sales had been reversed, and, after some discussion between the civil court and the collectorate, that illegal custom was abolished, and the case of "Parbuttee Magee" was mentioned, in which a sale

similar to the one under discussion had been reversed: they concluded by denying having borrowed money from the vakeels, or their being sharers in the suit, or in any way bearing its expenses, or promoting the measures in connection thereof, and declared the inapplicability of the case of "Zuhooroonnissa," quoted by the defendants.

Ramnath Chukurbuttee gave a petition, stating his having a joint interest in an 8 anna share of a howla in Radha Kishen Dass's share ousut talook Goluk Chunder Sein, joar Gazabea, and also a howla in his own name in kismut Kaladamma, the rent of which he paid to the talookdar auction purchaser, and disclaimed any interference with his rights.

The defendants, in their rejoinder, after insisting that the vakeels were sharers in the suit, and referring to a proceeding of the principal sudder ameen, of the 9th August 1849, on the subject, observed that Caze Ameenooddeen having purchased the share of the talook in question, as well as the 2 annas, 13 gundhas, 1 cowree, 1 kraunt share previously, he was put in possession by an ameen of the civil court when Tarapershad Doss and Futik Chunder Doss gave tahoods for those two shares: that the petition of Ramnath Chukurbuttee had been preferred by the plaintiffs themselves: that the howla alluded to by Ramnath Chukurbuttee had no connection whatever with the land for which the plaintiffs and Futik Chunder Doss had given kubooleuts: that although the land of "Ramnath Chukurbuttee mozaftal" was written, it was merely done for the purpose of continuing the two plots of land which Ramnath Chukurbuttee previously held for the purpose of worship in the household of the former proprietors. They denied the existence of any ousut talook called Goluk Chunder Sein, nor had Ramnath Chukurbuttee ever paid them any rent, or received any grant in support of his howla.

Mahomed Uzeem gave a petition, stating that talook Kishen Ram Doss and Ramdhun Doss had been formed out of talook Ramgobind Doss, and hoping that his interest in talook Ramdhun Doss, which he had purchased, would not be interfered with.

This case was originally instituted in the principal sudder ameen's court, and transferred to this file in consequence of a complaint preferred by one of the plaintiffs, which led to a separate enquiry, and was duly reported for the information of the Sudder Court. The first point to ascertain is, whether the plaintiffs have really borrowed money from the vakeels alluded to, and upon the strength of that loan have made them sharers in the suit. Amongst the documents filed before the principal sudder ameen, the defendants produced copies of two bonds given by the plaintiffs, namely, one to Krepa Moyee, the mother of Kassessur Doss, vakeel, for rupees 4,200, and another to Jeekunissa, mother of Toofail Ahmed, for rupees 4,100, both dated the 17th Assar 1255, and in each of these bonds the plaintiffs bound themselves not to alienate any property they might

hereafter possess until the loan was liquidated: and it further appears that on the very day the vakeels were suspended by the principal sudder ameen, (which order was reversed by this court as being premature,) the plaintiffs produced, unasked for, the original bonds and acknowledged *their* having borrowed money from the mothers of the respective vakeels, repudiating any connection with the vakeels themselves in this suit. The case of Brijloll Sein, appellant, *versus* Syed Hossein and others, respondents, decided by the Sudder Court on the 10th February 1846, and cited by the plaintiffs in refutation of the allegation of the defendants, bears no similarity to this case, nor is the precedent of Zuhooroonnissa, cited by the defendants and decided by the Sudder Court on the 15th August 1840, exactly a case in point; for *there* an acknowledgment was in existence according to which the plaintiff was to give up a portion of what might be awarded to her, in return for the expense of carrying on the suit: *here* there is no such acknowledgment forthcoming, and persons are now aware of the illegality of such proceedings. But, looking at the date of the bonds, namely, the 17th Assar 1255, and the date of this suit the 23rd Assar of the same year, the fact of the stamped paper on which these bonds were written being both purchased on the same day, the apparent absence of all connection with the plaintiffs with the persons who are said to have lent the money, the absence of all proof of their having lent money before or being able to command such a sum, and the unusual conditions inserted in the bonds regarding the non-alienation of their property by the plaintiffs, I cannot but consider the transaction on these grounds *alone* extremely suspicious, as regards the connection of the vakeels with this suit, of which no satisfactory explanation has been adduced; but the acknowledgment of the vakeels to the principal sudder ameen, as stated in his proceeding of the 9th August 1849 to this court, in connection with the separate enquiry alluded to above, copy of which has been filed by the defendants, and which has never been contradicted, clearly proves this case to be one of champerty: the words made use of by the principal sudder ameen are as follows: "ek rotteh Molvee Toofeel Ahmed on Kassessur Doss amar nikut jayakohilo je ei mokudumar modhye amara ache, khurch putter dyache, kichoo hissa paibe." For these reasons I nonsuit the plaintiffs, with costs, and the vakeels alluded to will be called upon for an explanation in a separate proceeding.

THE 13TH APRIL 1850.

No. 69 of 1847.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 18th September 1847.

Mirza Nubbee Bux, Nubeen Chunder Shaw, and Neelmadhub Shaw,
(Defendants,) Appellants,

versus

Manuel Camel Ferrao, heir and executor of Dr. Clement Dos Anjos, deceased, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff to obtain possession of an 8 anna share of a howla, with mesne profits, laying his damages at Company's rupees 1,996, 15 annas, 3 pie, 3 kraunts. He represented that there was a kharija talook of pergunnah Cossimnuggur, called Humeedoonnissa Khanum, in tuppah Hassenabad, jooar Dossparra, recorded in the collectorate in the name of Mirza Mahomed Jaffer, of which Dr. Clement Dos Anjos was an 8 anna sharer; that by the will of the late Dr. Clement Dos Anjos, Rocke Dos Anjos and Paschal Florentine Dos Anjos succeeded to a 12 annas share, and he to a 4 anna share of his property, he being appointed executor of the whole estate: that in connection with this talook in kismut Eentbarreca and other kismuts there was a howla called Mirza Emam Bux, of which an 8 anna share belonged to Mirza Nubbee Bux, and the other 8 anna share to his wife Ahilinnissa Khanum, by virtue of her marriage settlement: that, in consequence of her being pressed by a decree of court and other debts, Ahilinnissa on the 13th Sawun 1248, sold to Dr. Clement Dos Anjos her aforesaid property for a consideration of Company's rupees 4,000, the deed of purchase being drawn out in his (plaintiff's) name, and information given to the civil court: that in consequence of the opposition of Nehal Chand Shaw, through the collusion of Mirza Nubbee Bux and Nalkant Shaw, declaring that he had a farm of the property till the year 1249, he (plaintiff) could not obtain possession till the commencement of the year 1250: that about this time Mirza Nubbee Bux brought a complaint against him under Act IV. 1840, when the magistrate, with reference to his purchase and possession, decreed in his favor, but in appeal to the sessions court, in consequence of the fact of possession not being considered satisfactorily established, the disputed land was attached through the collector, with permission to sue in the civil court.

Mirza Nubbee Bux denied Ahilinnissa Khanum's proprietary right or her power to dispose of the share alluded to, and explained that, in consequence of his being embarrassed by decrees of court and other debts, he made it appear that he had transferred the 8 anna share of the howla to Ahilinnissa, without any transfer being actually recorded, and, taking from her an agreement not to dispose of the said share and an admission of his proprietary right, he

himself actually remained in possession, and in the year 1240, in the name of Ahilinnissa Khanum, gave a farm of the land to Nehal Chand Shaw, for a period of ten years: that in the meantime an intimacy having sprung up between the plaintiff and Ahilinnissa, and disputes arising therefrom between him (defendant) and his wife, she went to her father's house, and, on the 11th Bysack 1248, filed a power of attorney in the court of the judge of Dacca in the name of Ram Chunder Chukerbuttee, restoring her marriage portion and resigning all claim to the 8 annas share of the howla: that after this power of attorney had been attested by the cazee through her father and other persons, and the deed of resignation been duly signed, he circulated his own name, taking a grant to that effect from the zemindar, and receiving a fresh kubooleut from the farmers of the 8 anna share of the howla: that after such acknowledgment and resignation on the part of Ahilinnissa, the plaintiff's alleged purchase could not be maintained, and he had preferred objections on this score at the time the kuballa was about to be registered.

Peter Francis* Rebello gave a petition, denying the plaintiff's statement as to his being the executor of the property of the late Dr. Clement Dos Anjos, and declaring that there was another person of the same name as the plaintiff who was the real executor.

The plaintiff, in his replication, denied the acknowledgment or deed of resignation, and observed, if true, that the former document would have been produced in the various cases which have been pending regarding this howla, and would also bear the seal and signature of Ahilinnissa Khanum.

Nubin Chunder and Neel Madhub, sons of Nehal Chand Shaw, corroborated Mirza Nubbee Bux's statement relative to the farm of the howla.

The rejoinder of the defendant was merely a recapitulation of his former statement.

The principal sudder ameen, with reference to a copy of a decree of a former judge of this court, dated the 11th September 1836, and also of a former principal sudder ameen, dated the 20th April 1840, and a copy of an answer of Mirza Nubbee Bux, dated the 19th Poos 1242, and the deed of sale, dated 13th Sawun 1248, and the evidence adduced, had no doubt whatever that the land in question had been made over to Ahilinnissa Khanum as her marriage portion, and that the sale to Dr. Clement Dos Anjos had been really effected; and, discrediting the deed of resignation produced by the defendant Mirza Nubbee Bux, he decreed possession to the plaintiff of the disputed land, with mesne profits, and costs against Nobin Chunder Shaw, Neel Madhub Shaw, and Neel Kant Shaw, releasing the other defendants.

The objections urged in appeal are similar to those preferred in the court below, the appellants remarking that the principal sudder

ameen had not even alluded to the agreement given by Ahilnissa on the grant delivered by the zemindar to Mirza Nubbee Bux.

Independent of Mirza Nubbee Bux's admission of fraud, from which he can derive no advantage from this court, it is clear from an answer given by him in a case in 1836, that Ahilnissa Khanum was declared to be in possession of the 8 anna share of the howla by virtue of her marriage settlement, after the date of the acknowledgment alluded to; and with respect to the act of resignation of her rights alleged to have been executed by Ahilnissa, I cannot believe it to be genuine, but, taking into consideration the disputes between her and her husband, as shown by a proceeding of the Dacca court dated 23rd December 1841, and by Ahilnissa's petition against her husband and Ram Chunder Chukurbutee, dated the 15th Bysack 1248, and the fact of that mooktar's character, having been subsequently called in question by the Dacca court in 1843, I must look upon it as an additional attempt at fraud on the part of Mirza Nubbee Bux. The principal sudder ameen's order is therefore confirmed; and the appeal dismissed, with costs.

THE 25TH APRIL 1850.

No. 72 of 1847.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 21st September 1847.

Doorga Churn Rae, (Defendant,) Appellant,

versus

Brijruttun Doss Baboo, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff to recover the sum of Company's rupees 2,724, annas 10, pie 3, kraunts 5, principal and interest, being the balance of an account due from the defendant, who was formerly employed as a naib in the joint service of himself and his sharer Lalla Mitterjeet Sing, in their estate of Sydpore in this district: in the month of Kartick 1247, the collections being separated, the defendant was appointed naib for the plaintiff's own 6 anna share and remained in that capacity to the end of 1250: that in the account delivered by the defendant for that year, there was a balance remaining in his hands of Company's rupees 2,416, annas 14, pie 4, kraunt 6, and, being afterwards removed from his situation, he would neither pay that amount nor the balance for the period during which he was the joint servant of the plaintiff and Lalla Mitterjeet Sing: the plaintiff therefore reserved the recovery of the balance of the latter period for a separate suit, and brought this action for the balance for the year 1251.

Doorga Churn replied that he had delivered in his accounts for the period he was the joint servant of the plaintiff and Lalla Mitterjeet Sing: that the plaintiff appointed him naib for his 6 anna

share, and was so pleased with his intelligence that he sent him to Calcutta to attend to some cases pending in appeal in the month of Aughun 1248, where he remained till the month of Jyte 1251, and during his absence the plaintiff had realized his rents through other persons: that on his return from Calcutta he collected the rents for the year 1251, and gave in an account of the same, receiving from the plaintiff, on the 4th Sawun 1252, a receipt or "infisalee lekhun" on stamp paper: that the plaintiff was annoyed at his being appointed naib by Lalla Mitterjeet Sing, and also at his (defendant's) claiming some money owing to him by the plaintiff, and had in consequence got up this false suit.

The plaintiff, in his replication, denied the receipt alluded to by the defendant, nor was it customary to grant such documents; and if it had been correct, the fact would have been entered in the account delivered by the defendant; and if, moreover, any money had been owing to the defendant, he might have deducted it in his account.

The defendant, in his rejoinder, after repeating his former remarks, observed that, in a case in which the plaintiff had sued one Mohesh Chunder Gungapuddeen in the moonsiff's court at Cowcally, the infisalee lekhun was shown to be a customary mode of receipt in the plaintiff's serishta, that the suit was irregular in consequence of the plaintiff having reserved some portion of his claim for a future action, and, as the balance was paid after the delivery of the account, it could not have been there noted.

The principal sudder ameen was of opinion, with reference to the account delivered by the defendant and the evidence adduced, that the sum there entered, namely, Company's rupees 2,416, annas 14, pie 4, kraunts 6, was really due, and, discrediting the plea of payment in consequence of there being no mention of such payment in the receipt, which was written on a stamp of too low value, purchased 3 years and some months previously, and the paper being also suspicious in appearance, and there being a discrepancy in the evidence of the witnesses, some asserting that the balance was paid at the time the account was delivered, and others that it was paid 3 or 4 days afterwards, he rejected the receipt and oral evidence adduced by the defendants, and gave a decree for the plaintiff for the principal sum, Company's rupees 2,416, annas 14, pie 4, kraunts 6, and interest,—in all Company's rupees 3,118, annas 10, pie 3, kraunts 5, and costs.

The appellant reiterated his former pleas, alluded to the case of Chytun Kishen Pal as being similar to this suit, which had been nonsuited in this district in accordance with the Circular Order of the 11th January 1839, and denied the discrepancy in the evidence of the witnesses upon the point noticed by the principal sudder ameen.

The Circular Order quoted by the appellant has been superseded, and the objection, moreover, has no connection with this suit in its present shape. The appellant, in his rejoinder, declares that the

balance was paid after the delivery of the accounts, but the receipt "or infisalee lekhun" would lead one to suppose that it had been given at the *time* the accounts were delivered by the defendant. There are, moreover, no attesting witnesses to this document, which, from being written, as observed by the principal sudder ameen, on an old stamp paper of low value, and purchased some years previously, apparently by some one unconnected with either party, is certainly open to suspicion.

I see no reason therefore to disturb the principal sudder ameen's decision, which is confirmed, and the appeal dismissed, with costs.

ZILLAH BEERBHOOM.

PRESENT : F. CARDEW, ESQ., JUDGE.

THE 4TH APRIL 1850.

Case No. 217 of 1849.

Regular Appeal from a decision passed by the Moonsiff of Soory, Kooloodanund Mookerjea, October 24th 1849.

Soobhudra Dasya, (Defendant,) Appellant,

versus

Shoodam Chunder and Boikaunth Chunder, (Plaintiffs,) Respondents.

THIS suit was instituted on the 9th August 1848, to recover possession of a wall, and to set aside an order of the magistrate passed under Act IV. 1840.

The parties referred the decision of the matters in dispute to arbitrators, who gave an award to the plaintiffs, which the defendant objected to on the ground that the arbitrators had been guilty of partiality, in that they examined witnesses in her absence without administering to them the prescribed oath.

The moonsiff disallowed the defendant's objection, for the reasons given in his decision, and passed a decree in conformity with the award.

The law on the point is quite clear. By Section 9, Regulation XVI. 1793, "the award of an arbitrator or arbitrators is not to be set aside, except it be fully proved to the satisfaction of the court, *by the oaths of two credible witnesses*, that the arbitrator or arbitrators has or have been guilty of gross corruption or partiality in the cause in which the award may be made." But the defendant produced no witnesses in support of her objection, though witnesses were duly called for by the lower court on the 30th July, and she has assigned no reason for the default. I therefore confirm the decision, and dismiss the appeal, with costs.

THE 15TH APRIL 1850.

Case No. 216 of 1849.

Appeal from a decision passed by the Collector of Beerbhoom, Adam Ogilvie, Esquire, July 31st 1849.

Nudei Mundul, (Defendant,) Appellant,

versus

Bhoobuneshuree Dasya, (Plaintiff,) Respondent.

THIS suit was instituted under Section 30, Regulation II. 1819, by the plaintiff, Bhoobuneshuree Dasya, as the zemindar of lot Muddunpore, to recover the revenue of four tanks, situated in mouzah Beersingh.

The defendant, Nudei Mundul, pleaded that the tanks were held rent-free under a *sunnud* and *char*, granted by Rajah Usud-uz-zuman Khan in 1176 B. S., which were confirmed by the plaintiff's ancestor, Lukheshuree Dasya, under a *char*, dated 7th Assar 1222 B. S., signed in her name by her naib, Puddoo Lochun Mitr.

The collector decreed the suit in favor of the plaintiff, on the main grounds that the *sunnud* and *char*, alleged to have been granted by Rajah Usud-uz-zuman Khan in 1176, were not legible, and had not been registered under the provisions of Regulation XIX. 1793.

In this court the defendant rests his case on the *char* said to have been granted by the plaintiff's ancestor, Lukheshuree Dasya, in 1222, which he contends is binding on her heirs, and in support of this document he has produced three witnesses; but I am not satisfied with their evidence, which is, moreover, refuted by three witnesses examined on the other side, who depose that no such person as Puddoo Lochun Mitr was ever employed by Lukheshuree Dasya as naib, and that she always affixed her seal to documents executed by her, which the disputed *char* wanted, and in confirmation of their statement they produced certain documents attested by her in that manner. I therefore confirm the collector's decision, and dismiss the appeal, with costs.

THE 16TH APRIL 1850.

Case No. 35 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Soory, Koolooda-nund Mookerjee, December 31st 1849.

Rasmunee Soorinee, (Defendant,) Appellant,

versus

Kripa Muyee Bustomee, (Plaintiff,) Respondent.

THIS suit was instituted on the 29th May 1849, to recover the sum of Company's rupees 14-13, principal and interest on a bond

alleged to have been executed by the defendants, Mudhoo Soorinee and Rasmunee Soorinee, in the plaintiff's favor, under date the 2nd Srabun 1253 B. S.

The defendant, Mudhoo Soorinee, in answer, stated that the bond was executed in her name without her knowledge by her sister, Nurainee Soorinee, and that she had delivered to the plaintiff on account thereof 17 maunds of rice, valued at rupees 8-8.

The defendant, Rasmunee Soorinee (appellant,) denied the claim *in toto*, alleging that it had been got up in a spirit of revenge by the plaintiff's brother, Khetronath Sen, with whom she had a quarrel.

The defendants produced no evidence in support of their pleas; and the execution of the bond having been duly proved, in the moonsiff's opinion, by the evidence of three subscribing witnesses, he gave the plaintiff a decree.

The appellant, in the reasons of appeal, contends that the plaintiff's witnesses have been tutored, but she gives no sufficient grounds for the imputation, and none can be discovered on perusal of the evidence. I therefore confirm the decision under Clause 3, Section 16, Regulation V. 1831.

THE 18TH APRIL 1850.

Case No. 36 of 1850.

Regular Appeal from a decision passed by the late Moonsiff of Doobraj-pore, Moulvee Atta Alee, December 22nd, 1849.

Sheikh Mohummud Bheekun, (Plaintiff,) Appellant,

versus

Sheikh Haroo and others, heirs and successors of Sheikh Bhundoo, (Defendants,) Respondents.

THIS suit was instituted by the plaintiff (appellant) as the *moohurureedar* of mouzah Hosennugur, lot Hookumapore, on the 2nd October 1847, to set aside an order passed by the magistrate under Act IV. 1840, and to recover possession of beegahs 14-12 of *mal* land, valued at rupees 72-8.

The plaintiff stated that the defendant, Sheikh Bhundoo, formerly held, in mouzah Hosennugur, under a pottah and kubooleut, 21 beegahs of land, at a jumma of rupees 22-6; that the defendant, on the 3rd Bysakh 1252 B. S., resigned that land, and on the 17th idem executed a fresh agreement for beegahs 12-2-4, at a jumma of Company's rupees 12-15; that the defendant subsequently brought a complaint before the magistrate under Act IV. 1840, alleging that he (plaintiff) had dispossessed him of 7 beegahs of land, and obtained a decree, in execution of which he was put in possession of beegahs 26-14-4, including lands belonging to other ryots: he (plaintiff) therefore sought to set aside the magistrate's order, and to recover possession of the lands in excess of the agreement last executed.

The defendant, Sheikh Bhundoo, (since deceased,) in answer, stated that although he had executed an agreement and received a pottah for 21 beegahs of land, yet he never had possession of more than beegahs 12-1-4, and it was out of this quantity of land that the plaintiff dispossessed him of the 7 beegahs, of which he received possession under the magistrate's order. He denied that he had resigned the lands originally engaged by him, or that he had executed a fresh agreement as stated.

The moonsiff deputed a local ameen, who measured beegahs 25-2-14-4-3 of land pointed out by the plaintiff as being in the defendants' possession: of this quantity only beegahs 15-4-0-3 were found on enquiry to be in the defendant's possession, being beegahs 1-18-19-3 in excess of the estimated quantity of which he was maintained in possession under the magistrate's order; of the remainder, beegahs 9-18-14, beegahs 5-16-14 were proved by the plaintiff's own witnesses to be in possession of other parties, and the rest, beegahs 4-2, was waste; and as the plaintiff had failed to prove that the defendant had resigned the jumma originally engaged by him, and had executed a fresh agreement, the moonsiff dismissed the suit.

In the reasons of appeal, the plaintiff contends that the defendant was only entitled to possession of beegahs 12-1-4 of land, and that the moonsiff ought to have decreed the difference. But the plaintiff having failed to prove the alleged resignation, the defendant's heirs are clearly entitled to possession of beegahs 21, whereas they are in possession of only beegahs 15-4-0-3, by the plaintiff's own showing. I therefore reject the appeal, and confirm the decision of the lower court, under Clause 3, Section 16, Regulation V. 1831.

THE 20TH APRIL 1850.

Case No. 40 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Gopalpore, Gopeenath Das, December 19th, 1849.

Dwarkanath Samunt, (Plaintiff,) Appellant,

versus

Jugunnath Chuttopadhya and others, (Defendants,) Respondents.

THIS suit was instituted on the 20th September 1848, to recover damages to the amount of Company's rupees 28-6, for the loss of a cart attached in execution of a decree taken out by the defendant, Jugunnath Chuttopadhya, against Moorlee Gope and another, on its way to Ratoora Ghaut, on the banks of the Damoodur, laden with wood.

The plaintiff stated that the cart was his own property, and had been hired with other carts by Moorlee Gope, for the conveyance of wood from a jungle in mouzah Purapunge; that the cart had been damaged by exposure after the attachment took place, and he

therefore sought to recover its value 9 rupees, and compensation for the loss of its hire at the rate of 5 annas a day, from the date of attachment, the 7th Srabun 1255 B. S., to the date of institution of the suit.

The defendants, Jugunnath Chuttopadhya and Ootsub Sham and Chakur Mundul, the two latter of whom took charge of the attached property, pleaded, in answer, that the cart belonged to Moorlee Gope, and that the damages claimed were excessive, inasmuch as the cart was not worth 9 rupees, and could not be made use of without a pair of bullocks and a driver.

The moonsiff found that the cart was the property of the plaintiff; but he was of opinion that the plaintiff was not entitled to any damages beyond its value, because a cart without a pair of bullocks and a driver was useless, and employment was uncertain. In respect to the value of the cart, he rejected the evidence of the witnesses adduced by the plaintiff, because they could only depose to its value by estimation; and he referred the point to two men, named Bharut Chund Dutt and Mudhoo Soodun Podar, who were in attendance in court, who told him that carts used in drawing wood and *hunkur* for the public roads were worth only 5 or 6 rupees a piece, and as a cart was made of wood and therefore liable to injury, and the plaintiff acknowledged that he had used his six or seven months since its purchase when new, he was of opinion that one-half of the value assessed as above was as much as the plaintiff could claim, and he accordingly awarded to him against Jugunnath Chuttopadhya the sum of 3 rupees, with costs in proportion.

In referring the case to the two men who were present in court, with the view of passing a decree, the moonsiff exceeded his competency and transgressed the law, Section 16, Regulation IV. 1793, which expressly prohibits such reference. No sufficient grounds are given by the moonsiff for his assumption, that a cart becomes depreciated in value to the extent of one-half after a few months' use; and his reasons for disallowing damages in excess of the value of the cart are obviously erroneous, for, as justly observed in the reasons of appeal, though a cart without bullocks and driver may be useless, the bullocks and driver become comparatively useless without the cart. The plaintiff is clearly entitled to fair damages; but the decision arrived at by the moonsiff is almost a denial of justice. I therefore reverse the decision, and remand the suit to the moonsiff, with directions to assess the damages justly with reference to the evidence and the circumstances of the case.

THE 20TH APRIL, 1850.

Case No. 41 of 1850.

*Regular Appeal from a decision passed by the Moonsiff of Gopalpore,
Gopeenath Das, December 19th, 1849.*

Gooroochurn Ghose, (Plaintiff,) Appellant,

versus

Jugunnath Chuttopadhyia and others, (Defendants,) Respondents.

THIS suit was instituted on the 20th September 1848, to recover damages to the amount of Company's rupees 29-6, for the loss of a cart.

The circumstances of the case, the pleadings of the parties, and the decision of the moonsiff, are similar to those recorded under the case No. 40 of 1850, decided this day; and I remand the suit for re-trial, on the same grounds.

THE 20TH APRIL 1850.

Case No. 42 of 1850.

*Regular Appeal from a decision passed by the Moonsiff of Gopalpore,
Gopeenath Das, December 19th, 1849.*

Ramlochun Bukshee, (Plaintiff,) Appellant,

versus

Jugunnath Chuttopadhyia and others, (Defendants,) Respondents.

THIS suit was instituted on the 20th September 1848, to recover damages to the amount of Company's rupees 31-12, for the loss of a cart.

The circumstances of the case, the pleadings of the parties, and the decision of the moonsiff, are similar to those recorded under the case No. 40 of 1850, decided this day; and I remand the suit for re-trial, on the same grounds.

THE 20TH APRIL 1850.

Case No. 43 of 1850.

*Regular Appeal from a decision passed by the Moonsiff of Gopalpore,
Gopeenath Das, December 19th, 1849.*

Sreeram Mullick, (Plaintiff,) Appellant,

versus

Jugunnath Chuttopadhyia and others, (Defendants,) Respondents.

THIS suit was instituted on the 20th September 1848, to recover damages to the amount of Company's rupees 29-6, for the loss of a cart.

The circumstances of the case, the pleadings of the parties, and the decision of the moonsiff, are similar to those recorded under the case No. 40 of 1850, decided this day; and I remand the suit for re-trial, on the same grounds.

THE 20TH APRIL 1850.

Case No. 44 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Gopalpore, Gopeenath Das, December 19th, 1849.

Byrub Mundul, (Plaintiff,) Appellant,

versus

Jugunnath Chuttopadhya and others, (Defendants,) Respondents.

THIS suit was instituted on the 20th September 1848, to recover damages to the amount of Company's rupees 30-12, for the loss of a cart.

The circumstances of the case, the pleadings of the parties, and the decision of the moonsiff, are similar to those recorded under the case No. 40 of 1850, decided this day; and I remand the suit for re-trial, on the same grounds.

THE 20TH APRIL 1850.

Case No. 45 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Gopalpore, Gopeenath Das, December 19th, 1849.

Ramdyal Mundul, (Plaintiff,) Appellant,

versus

Jugunnath Chuttopadhya and others, (Defendants,) Respondents.

THIS suit was instituted on the 20th September 1848, to recover damages to the amount of Company's rupees 28-6, for the loss of a cart.

The circumstances of the case, the pleadings of the parties, and the decision of the moonsiff, are similar to those recorded under the case No. 40 of 1850, decided this day; and I remand the suit for re-trial, on the same grounds.

THE 20TH APRIL 1850.

Case No. 46 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Gopalpore, Gopeenath Das, December 19th, 1849.

Gudadhur Bundopadhya, (Plaintiff,) Appellant,

versus

Jugunnath Chuttopadhya and others, (Defendants,) Respondents.

THIS suit was instituted on the 21st September 1848, to recover damages to the amount of Company's rupees 30-12, for the loss of a cart.

The circumstances of the case, the pleadings of the parties, and the decision of the moonsiff, are similar to those recorded under the case No. 40 of 1850, decided this day; and I remand the suit for re-trial, on the same grounds.

THE 20TH APRIL 1850.

Case No. 47 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Gopalpore, Gopeenath Das, December 19th, 1849.

Ramchurn Ghose, (Plaintiff,) Appellant,
versus

Jugunnath Chuttopadhyaya and others, (Defendants,) Respondents.

THIS suit was instituted on the 21st September 1848, to recover damages to the amount of Company's rupees 29-6, for the loss of a cart.

The circumstances of the case, the pleadings of the parties, and the decision of the moonsiff, are similar to those recorded under the case No. 40 of 1850, decided this day; and I remand the suit for re-trial, on the same grounds.

THE 20TH APRIL 1850.

Case No. 48 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Gopalpore, Gopeenath Das, December 19th, 1849.

Tara Chand Tamoollee, (Plaintiff,) Appellant,
versus

Jugunnath Chuttopadhyaya and others, (Defendants,) Respondents.

THIS suit was instituted on the 21st September 1848, to recover damages to the amount of Company's rupees 31-10, for the loss of a cart.

The circumstances of the case, the pleadings of the parties, and the decision of the moonsiff, are similar to those recorded under the case No. 40 of 1850, decided this day; and I remand the suit for re-trial, on the same grounds.

THE 20TH APRIL 1850.

Case No. 49 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Gopalpore, Gopeenath Das, December 19th, 1849.

Jugunnath Baoree, (Plaintiff,) Appellant,
versus

Jugunnath Chuttopadhyaya and others, (Defendants,) Respondents.

THIS suit was instituted on the 21st September 1848, to recover damages to the amount of Company's rupees 30-10, for the loss of a cart.

The circumstances of the case, the pleadings of the parties, and the decision of the moonsiff, are similar to those recorded under the case No. 40 of 1850, decided this day; and I remand the suit for re-trial, on the same grounds.

THE 20TH APRIL 1850.

Case No. 50 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Gopalpore, Gopeenath Das, December 19th, 1849.

Neelachul Bag, (Plaintiff,) Appellant,

versus

Jugunnath Chuttopadhya and others, (Defendants,) Respondents.

THIS suit was instituted on the 21st September 1848, to recover damages to the amount of Company's rupees 30-10, for the loss of a cart.

The circumstances of the case, the pleadings of the parties, and the decision of the moonsiff, are similar to those recorded under the case No. 40 of 1850, decided this day; and I remand the suit for re-trial, on the same grounds.

THE 20TH APRIL 1850.

Case No. 51 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Gopalpore, Gopeenath Das, December 19th, 1849.

Byrub Tamoollee, (Plaintiff,) Appellant,

versus

Jugunnath Chuttopadhya and others, (Defendants,) Respondents.

THIS suit was instituted on the 21st September 1848, to recover damages to the amount of Company's rupees 31-10, for the loss of a cart.

The circumstances of the case, the pleadings of the parties, and the decision of the moonsiff, are similar to those recorded under the case No. 40 of 1850, decided this day; and I remand the suit for re-trial, on the same grounds.

THE 20TH APRIL 1850.

Case No. 52 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Gopalpore, Gopeenath Das, December 19th, 1849.

Sreeroop Puramanick, (Plaintiff,) Appellant,

versus

Jugunnath Chuttopadhya and others, (Defendants,) Respondents.

THIS suit was instituted on the 21st September 1848, to recover damages to the amount of Company's rupees 31-10, for the loss of a cart.

The circumstances of the case, the pleadings of the parties, and the decision of the moonsiff, are similar to those recorded under the case No. 40 of 1850, decided this day; and I remand the suit for re-trial, on the same grounds.

THE 26TH APRIL 1850.

Case No. 24 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Kunderah, Mirza Ushkuree Fikrut, December 31st, 1849.

Doro Dasya, mother and guardian of Koilas Mundul, minor, and Deenoo Mundul, (Defendants,) Appellants,

versus

Kistomunee Debya and Radhamunee Debya, (Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiffs, as the zemindars of mouzah Kulgram, on the 6th June 1849, to recover the sum of Company's rupees 19-14-5, arrears of rent, with interest, alleged to be due on account of the years 1249, 1250, and 1251 B. S., on a jumma of rupees 20-14-1, lately held by Rajib Mundul, deceased.

The plaint sets forth that Rajib Mundul died at the commencement of the year 1252, leaving arrears of rent due on the above jumma to the amount of rupees 12-11, exclusive of interest; that his widow, Sukheemunee Dasya, succeeded to his estate, but resigned the jumma immediately after his death without paying the money; that Sukheemunee Dasya died herself in the month of Chyete 1254, leaving her husband's uncle, Bansee Mundul, and Bansee Mundul's sons, Sreenath Mundul and Jankeenath Mundul, in the possession of her property as heirs; but their right having been disputed by Rajib Mundul's sister, Doro Dasya, and her two sons, Deenoo Mundul and Koilas Mundul, the plaintiffs' predecessor, Kumul Lochun Bazpae, (deceased,) brought a suit under No. 219 of 1848, to recover the arrears against the whole of the claimants, and was nonsuited on the 16th May 1849, on the ground of informality; and as Doro Dasya and her sons have since been put in possession of Sukheemunee Dasya's estate, by an order passed under Act XIX. 1841; the plaintiffs now sought to recover the arrears from them.

The defendants, Doro Dasya and Deenoo Mundul, in answer, denied the claim, alleging that it had been got up in collusion with Bansee Mundul and his sons, against whom they had brought a case under Act XIX. 1841, to recover the deceased Sukheemunee's estate.

The moonsiff gave a decree in favor of the plaintiffs, on the ground that the claim was proved by the evidence of three witnesses and the zemindaree accounts.

I am not satisfied as to the justness of the plaintiffs' claim. The three witnesses state that the deceased Sukheemunee acknowledged, when her resignation was accepted, that there was an arrear of rent due from her husband; but I cannot place any confidence in their evidence, for it appears from the record of the case under Act XIX. 1841, that they were the very witnesses produced by Bansee Mundul, in support of his pretensions to succeed to Sukheemunee's property, a coincidence that goes to confirm the plea that the claim is collusive. The zemindaree accounts are not to be depended upon; they are without signature, and the person produced to attest them, who has been in the plaintiffs' employ only since the month of Phalgun 1255, gives as the only reason for their authenticity, that he collects the rents according to them. Sukheemunee Dasya lived nearly three years after the resignation of the jumma, and died in good circumstances, as is proved by the case under Act XIX. 1841. It is therefore unlikely that the plaintiffs would have waited so long without taking measures to recover the arrears, if they were due: it does not appear that any demand was ever made before the institution of the suit. I therefore, having no confidence in the claim, reverse the moonsiff's decision, and decree the appeal, with costs in both courts.

ZILLAH BHAUGULPORE.

PRESENT: W. S. ALEXANDER, Esq., JUDGE.

THE 19TH APRIL 1850.

No. 34 of 1848.

*Appeal from the decision of Moulvee Mahomed Huneeff, Acting Sudder
Ameen of Monghyr.*

Mussamut Jewun Kumurree, (Defendant,) Appellant,

versus

Ameer Beg, (Plaintiff,) Respondent.

INSTITUTED 20th January 1846, decided 19th August 1848.

The plaintiff instituted this suit to set aside the sale of an orchard, made in an execution of decree case, in which the defendants, Soopun Lall and Lall Beharee, took out execution against the defendant Mussamut Jewun Kumurree. The defendant Neem Chund Singh purchased the lot for rupees 195-8; and when plaintiff was dispossessed, he complained to the criminal court under Act IV. 1840; but the auction purchaser was retained in possession, and the plaintiff was referred to the civil court. The orchard stands upon the rent-free lands of the plaintiff, and the defendant Jewun Kumurree has no rights therein. Plaintiff sues for possession, and mesne profits during the period he was kept out of possession.

The defendant Jewun Kumurree answers, that the orchard and ground had been in the possession of herself and ancestors, for a period of 70 years.

The former sudder ameen, Moulvee Ally Buksh, gave a partial decree in plaintiff's favor, awarding him the ground, but refusing to give him possession of the trees, because he had made no objection to the sale for a full year after that event. On appeal by the plaintiff and two of the defendants, the case was remanded for further enquiry.

The acting sudder ameen, after deputing an ameen to the spot for the purpose of ascertaining, by local enquiry, to whom the orchard belonged previous to the sale, has decreed possession of the ground and trees to the plaintiff, with whatever amount of mesne profits may be ascertained to be due at the time of giving possession.

From this decision the defendant Jewun Kumurree has appealed, on the grounds that the orchard was never in possession of the plaintiff, and that the trees were planted by her ancestor.

The respondent appeared, and put in an answer, urging that the appellant at one time stated that the orchard was acquired by purchase, and at another that it was planted by her ancestor.

JUDGMENT.

This suit was instituted to set aside a sale, made in execution of a decree against the appellant on the 24th August 1841, in which the rights and interests of the said appellant in the trees of an orchard situate in mouzah Maheodeenpore, pergunnah Monghyr, were put up and purchased by the defendant Meer Chund, who, on effecting the purchase, gave a lease of the said orchard to one Jugurnath Singh for a term of years. On the lessee taking possession, the respondent complained in the criminal court under Section 4, Act IV. 1840; but the magistrate upheld the lease, and directed the complainant to prefer his claims in the civil court. This course was followed by the respondent, and he obtained a decree for the ground on which the trees stand; but the case, on appeal, was remanded to the lower court for further enquiry, because the decree was not sufficiently defined, and as the trees in the orchard were stated to be of some 30 years' growth, and were tacitly admitted by the decision to belong to Mussamut Jewun Kumurree, it seemed strange to decree the ground on which they stood to another party. It appears from the local investigation now made, that the ground and trees belong to the respondent, forming a portion of the rent-free land which he holds in mouzah Maheodeenpore. The circumstance of a Mahomedan burial ground being situated within the area of the orchard, as admitted by all parties, is strong corroborative proof in the respondent's favor, as it is not probable that a Hindoo would select such a place for planting an orchard. The appellant, moreover, has failed to show how her ancestors acquired possession of the orchard. The chief proof on which she rests her claim, is the fact of the sale by the civil court; but it is to remedy this wrong, that the respondent has brought the present suit. I therefore see no grounds for interfering with the decision of the lower court. Order accordingly, with costs.

THE 19TH APRIL 1850.

No. 32 of 1848.

Appeal from the decision of Moulvee Mahomed Huneeff, Acting Sudder Ameen of Monghyr.

Soopun Lall, (Defendant,) Appellant,

versus

Ameer Beg, (Plaintiff,) Respondent.

THIS case is connected with appeal case No. 34 of 1848, decided by me this day. The appellants appeal because they have been

charged with costs; but as, in executing their decree against Mussamut Jewun Kumurree, they petitioned the court for the sale of an orchard which did not belong to the defendant, they are therefore properly charged with costs. Order accordingly.

THE 19TH APRIL 1850.

No. 33 of 1848.

Appeal from the decision of Moulvee Mahomed Huneef, Acting Sudder Ameen of Monghyr.

Neem Chund, Defendant, (Appellant),

versus

Ameer Beg, (Plaintiff,) Respondent.

THIS case is connected with appeal case No. 34 of 1848, decided by me this day; and the decision in that appeal will rule in this case also. Appeal dismissed, with costs.

THE 25TH APRIL 1850.

No. 4 of 1848.

Appeal from the decision of Moulvee Muazzim Hossein, Principal Sudder Ameen.

Chowdhry Imam Buksh, (Defendant,) Appellant,

versus

Goonanund Jha, (Plaintiff,) Respondent.

INSTITUTED 11th September 1846, decided 8th April 1848.

This was a suit to recover Company's rupees 1,567, the profits of a farm taken by the plaintiff from Chowdhry Jullal Buksh, deceased, who, notwithstanding the existence of plaintiff's lease, let the estate in farm to Ajmeeree Laul, defendant.

The defendant, Chowdhry Imam Buksh, admits the fact of the plaintiff's lease, but he qualifies the admission by stating that Ajmeeree Laul's lease was of prior date. The principal sudder ameen, in decreeing the case in plaintiff's favor, has not stated in his decree the amount of damages to which he is entitled, but leaves their adjustment for future consideration.

The case has come before this court in appeal; and as the decision of the lower court appears incomplete, in absence of any specification of the amount of damages awarded, it is hereby remanded to the principal sudder ameen, that he may replace it on his file, and include the amount of damages to which the plaintiff after enquiry may appear to be entitled. The usual order with regard to the stamp paper.

THE 29TH APRIL 1850.

Case No. 164 of 1849.

Appeal from the decision of Mr. Macdonald, Moonsiff of Monghyr.
 Bundoo Sahoo, (one of the Defendants,) Appellant,

versus

Bharu Baboo, (Plaintiff,) Respondent.

INSTITUTED 25th November 1848, decided 9th July 1849.

The plaintiff brought this suit on an instalment bond, which the defendant, against whom he held an execution of decree, gave on the 18th August 1845, agreeing to pay him at the rate of rupees 2 per mensem till the amount (rupees 57) was liquidated. Interest was to be charged in the event of the stipulated payments not being regularly discharged. Plaintiff had received rupees 33-2, which he had noted, according to agreement, on the back of the instrument. The balance defendant refused to make good. Plaintiff therefore sues for rupees 42-2-8.

The defendant answers, that he had liquidated the whole of the amount due, and held plaintiff's receipts for the sums paid in excess of the rupees 33-2 noted on the bond.

The moonsiff decreed rupees 38-14-7 in plaintiff's favor. The receipts had not been proved to his satisfaction; besides, when it had been agreed that the instalments paid, were to be noted in the back of the instalment, it was not likely that the plaintiff would have given separate receipts.

From this decision the defendant has appealed, urging, among other grounds, that the interest has been wrongly calculated. Respondent summoned.

JUDGMENT.

The moonsiff, in calculating the interest, has allowed it on each instalment for the full period; whereas it ought to have been calculated from the date on which the instalment fell due. The decision must therefore be so far amended, and a decree given for rupees 28-9-6, with costs in this proportion.

THE 30TH APRIL 1850.

No. 174 of 1849.

*Appeal from the decision of Moulvee Muhomed Huneeff, first grade
Moonsiff of Bhaugulpore.*

Blundee Munder Bhuggut, (Plaintiff,) Appellant,

versus

Ruhumutoolnisa, widow of Mirza Khatim Hossein, Guardian of
Mirza Abbas Ally, Wadyah Khanum, and others, (Defendants,).
Respondents.

INSTITUTED 1st February 1849, decided 20th July 1849.

The plaintiff brought this action to recover from the defendants, as heirs of Mirza Khatim Hossein, the sum of rupees 129, being principal and interest of a bond, bearing date 20th Chyete 1258 F. S. The defendants are heirs of the deceased, and in possession of his property.

The defendants answer, that they know nothing of the transaction on account of which plaintiff has brought this suit; moreover, they are not in possession of the deceased's property.

The moonsiff decreed the case against the estate of the deceased borrower, releasing the defendants from responsibility.

The plaintiff has appealed from this decision, urging that the defendants are in possession of the deceased's property, and should be made responsible.

JUDGMENT.

The respondents were not parties to the transaction, and cannot be made personally responsible. The appellant, however, can, under the decree, attach, in satisfaction of his debt, any property the deceased may have left. Appeal dismissed.

THE 30TH APRIL 1850.

No. 173 of 1849.

*Appeal from the decision of Moulvee Mahomed Huneeff, first grade
Moonsiff of Bhaugulpore.*

Doman Khan, (Defendant,) Appellant,

versus

Sheb Churun Saho, (Plaintiff,) Respondent.

INSTITUTED 20th January 1849, decided 20th July 1849.

This was a claim for the value of 300 maunds of wood, delivered in Pous 1256 F. S. to the defendant, for which he agreed to pay at the rate of Company's rupees 10 per maund. Plaintiff therefore brings this suit to obtain rupees 30.

The defendant states, in his answer, that the plaintiff's account of the transaction is incorrect. Plaintiff seized two boats laden with

wood belonging to defendant, and complaint was made in the magistrate's court.

The moonsiff decreed the amount claimed in plaintiff's favor, as the defendant adduced no proof to support his defence.

From this decision the defendant has appealed, urging that he was prevented by sickness from attending to his case before the moonsiff's court.

JUDGMENT.

The plea urged by the appellant cannot be allowed. He had ample time, from filing his answer to the final hearing, to bring forward any evidence he might have in proof of his defence. Appeal dismissed, without summoning the respondent.

ZILLAH EAST BURDWAN.

PRESENT: JAMES ALEXANDER, ESQ., OFFICIATING JUDGE.

THE 1ST APRIL 1850.

Case No. 406 of 1849.

*Appeal from the decision of Gunga Churn Shome, Moonsiff of Selimabad,
dated the 10th November 1849.*

Rajkishen Ghose, (Plaintiff,) Respondent,

versus

Lokenauth Ghose, (Defendant,) Appellant.

PLAINT for rupees 25, for arrears of revenue.

The defendant has a jumma paying rupees 22, annas 4 per annum in plaintiff's talook, but has not paid his rent for the year 1255: he is therefore sued in this present action.

Defendant states that he has a jumma paying rupees 23, annas 7, gundahs 15, cowries 2, he was unable to pay the kists as they fell due, but paid 21 rupees on the 24th Aughun; he asked for a dakhila, the plaintiff refused him a regular dakhila, but gave him a "rokha." Defendant filed the dakhila in a suit in the criminal court in which this plaintiff was fined ten rupees, in revenge for which the plaintiff has brought this suit.

The moonsiff decides against the rokha, because the defendant states that he made payment up to Aughun, whereas in the rokha credit is given up to Poos; the witnesses also state that the talookdar entered the rupees in the accounts, whereas it is written on the rokha that the entry would not be made until the whole account was discharged. The proceedings in the criminal court do not affect the rokha.

Although not exactly agreeing with the moonsiff that the reasons assigned by him are conclusive against the dakhilas, I yet think it is extremely improbable that the defendant, who is shown to be at enmity with his talookdar, should make any payment without obtaining a regular dakhila; at any rate, by his own showing, he was bound to prove that he had offered the remainder of his rent and

made a regular demand for his dakhila; his having failed to do this, throws additional doubt on the disputed rokha, and, in my mind, turns the scale of evidence against him. I confirm the decision of the moonsiff.*

THE 1ST APRIL 1850.

Case No. 407 of 1849.

Appeal from the decision of Pearee Mohun Bonnerjea, Moonsiff of Kytee, dated the 7th December 1849.

Brimo Moe, (Plaintiff,) Appellant,

versus

Kummul Monee and Ramdhun Gangoollee, (Defendants,) Respondents.

SUIT for 27 rupees 12 annas, value of offerings to an altar.

The plaint states that there is a temple to Bulram, in mouzah Jote Anund. The plaintiff's husband, Ramkissur Udhikaree, was one of the officiating priests, and received a share of the offering; on his death the plaintiff became entitled to the offerings on particular dates, amounting in all to forty-four days in the year; certain offerings to the amount of 27 rupees 12 annas were made on the 1st of Maugh 1254, through one Gooroo Churn Adhuck, a disciple of plaintiff's husband, and Harradhun Banoorjea, her servant; the defendant, Ramdhun Gangoollee, a servant of Kummul Monee, widow of Brijkissore Udhikaree, brother to the deceased Ramkissur Udhikaree, carried off this amount by force. A plaint was lodged in the criminal court, on trial of which one Madhub Chund was imprisoned for fifteen days, but was subsequently released in appeal. The plaintiff therefore seeks her remedy in the civil court.

Kummul Monee, in her defence, states that, on the death of her husband, the plaintiff's husband had dispossessed her of her rights, upon which she, the defendant, sued him, and obtained a decree, re-establishing her in her rights, by which she is entitled to one-half of the profits of ninety-nine days, the whole being divisible between herself and plaintiff. Although the plaintiff brought a criminal action against her, yet her suit was dismissed.

Ramdhun Gangoollee and others reply that the suit has been got up at the instigation of Ramkumal Udhikaree, and that the suit for plunder was dismissed in the foudaree court.

Ramkumal Udhikaree supports the plaint.

The moonsiff referred the case to arbitrators, but they failed to arrive at any conclusion, chiefly (as would appear from the moonsiff's roobukaree) from the violent conduct of the plaintiff. The arbitration having failed, the moonsiff gave a decree against Ramdhun Gangoollee and his abettors in favor of the plaintiff for half of the amount for which she had sued, considering that the defendant Kummul Monee was entitled to the other half.

The plaintiff has appealed against this decision, on the ground that Ramdhun Gangoolee, having violently plundered the whole amount of collections, was liable to be called on to refund the whole amount.

JUDGMENT.

It is evident that the moonsiff has opened the ground for appeal by allowing the plaintiff to sue upon a very imperfect proof of her title. Her statement is that she is entitled to the entire proceeds of the temple for forty-four days in the year; the statement of her coparcener is that she is entitled to the half proceeds of eighty-nine days in the year. There is a great difference between the two statements, as some days are likely to be more productive than others as festivals, &c., and the plaintiff endeavours to take these particular days for her own share instead of fairly dividing the eighty-nine days. The plaintiff, having made this statement, was bound either to prove it, or stand by the consequences of her inability to do so. The moonsiff will call upon the plaintiff to prove the existence of such a division as would give her a claim to the entire profits of the day on account of the proceeds of which the suit is laid: if she is unable to prove her claim or her power to sue as agent on the part of her co-sharer, he will dismiss the suit.

THE 2ND APRIL 1850.

Case No. 256 of 1849.

Appeal from the decision of Nobinkisto Paulit, Moonsiff of Cutwa, dated the 29th May 1849.

Gopal Moollah and Neamut Moollah, (Plaintiffs,) Respondents,

versus

Bunjut Sheik, Koodoo Moollah, and Rooknee Bullub, (Defendants,) Appellants.

THE suit was brought to reverse a decision under Act IV. 1840, in virtue of which the defendants had obtained possession of certain interests in a tank in mouzah Shagurpore.

The plaintiffs stated that they were the sole lessees of the tank, for which, in the month of Kartick 1249, they had executed a kuboolcut, agreeing to pay a yearly rent of 3 rupees, 3 annas, 4 pie.

The defendants contend that the tank was originally held free by themselves and the plaintiffs; that the talookdar having determined to assess it, they (the plaintiffs and defendants) executed engagements also in Kartick 1249, agreeing to pay 6 rupees for the tank per annum.

The talookdar, who is included amongst the defendants, supports the plaintiffs, declaring them to be his lessees, to the exclusion of the defendants.

The moonsiff remarks that the claim of either party is unsupported by documentary evidence; that although there were eight witnesses for the defence, and only three for the plaint, that the former were all non-resident, whereas one of the latter is related to both parties, and his evidence clearly proves the claim of the plaintiffs, as also the fact that they undertook and completed the repairs of the tank: in the absence of documentary evidence, he also considers the recognition of the plaintiffs by the talookdar, as his lessees, to be conclusive in their favor; he decrees accordingly.

In appeal, the defendants brought copies of documents from the foudardar court, to prove that the plaintiffs had been convicted of assaulting them, and, as they affirm, taking from them receipts for rent, by which they declare that they could have proved their joint tenancy with the plaintiffs; they lay great stress also on their having proved their occupancy in the suit before the magistrate. This evidence is not sufficiently clear to be of any avail; the appellants have entirely failed to prove their title; they have not made good the fact that the tank was formerly held in joint tenancy as lakhi-raj. Although their witnesses depose to the execution of a kuboolent, yet they do not prove what the conditions of the lease were; they have not shown any such title or tenure as would place them beyond the power of the talookdar; even if they had some sort of joint possession, which I am inclined to think they had, they have failed to prove their title to retain it. The talookdar has it in his power to let his tank to whom he likes; he has elected the plaintiffs; there is no evidence of any title which could bar this election. I confirm the decision of the moonsiff.

THE 2ND APRIL 1850.

Case No. 258 of 1849.

Appeal from the decision of Hamidool Huq, Moonsiff of Mahomedpore, dated the 25th 1849.

Bhugwuttee Dossee, (Plaintiff,) Respondent,

versus

Nundcoomar Raie and others, (Defendants,) Appellants.

PLAINT for 89 rupees, 5 annas, 19 gundahs.

The plaintiff states that her husband's elder brother, Nundcoomar Kur, possessed a jumma in Lohar. Although the plaintiff was not in any way concerned, yet Nundcoomar Raie, the lessee of the village, had obtained a decree against her infant son, Khylas, for the amount. The plaintiff has brought this action to recover the amount unjustly decreed against her.

The defendants state the plaintiff's husband, Radhanath Kur, had joint possession with his brother, Nundcoomar Kur; on the death of Radhanath she became liable in his stead, or rather her son, Khylas, who was not an infant as alleged.

The moonsiff decides that the suit was for a jumma of which Nundcoomar was the registered proprietor: the plaintiff's witnesses also disprove the joint tenancy of the plaintiff with Nundcoomar, and prove the infancy of her son; which latter fact is also proven by two decrees of his own court. Although the ameen reports the occupancy of Khylas, yet in his infancy this is not tenable.

The appeal states that even if the decree given in the first instance by the moonsiff was wrong, yet he had no power of reversing it; also the cases on which the moonsiff relies for proving the infancy of Khylas, were not decided before the present appellants, so that they could object to them; neither is the age of Khylas yet proven, and no objection on this head was taken by the other defendants in the case; had opportunity been afforded, the appellants could have proved that Khylas had attained his majority.

The respondent attempts to argue that the defendant, Khylas, having been a minor in the first suit, and therefore not actionable, that under the precedent, dated September 1st, 1847, Gunesh Dutt and others, plaintiffs, *versus* Ramdyal Singh and others, defendants, the moonsiff was empowered to entertain the suit for the reversal of his own decision. I am clearly of opinion that the suit was barred by Section 16, Regulation IV. 1793, and that the precedent is inapplicable to the circumstances of the case. The decision of the moonsiff is reversed.

THE 2ND APRIL 1850.

Case No. 260 of 1849.

Appeal from the decision of Mr. J. S. Bell, Moonsiff of Burdwan, dated the 23rd May 1849.

Sheikh Ashuk Mahomed, (Plaintiff,) Appellant,

versus

1, Kisshen Dome, and 2, Tarrachand Dome, (Defendants,) Respondents.

THIS was a suit for rent of an orchard for the years 1253 and 1254, including interest. The plaintiff sets forth his title as purchaser of the orchard from Radha Binode Huldar and others.

The defendants deny this title, declare that the orchard belongs to Radha Binode Huldar, who let it to the plaintiff for five years; that the plaintiff sublet it to them, and has received his rents up to 1253, for which the defendants hold his dakhilas; that, on the expiry of plaintiff's lease, defendants continued to hold under the Huldars, to whom they have paid their rent.

Radha Binode Huldar, on behalf of his party, appears as a third party and supports the defendants, declaring that they never sold the orchard to the plaintiff, but only gave him a lease for five years.

The plaintiff produces a kubooleut signed by the defendants, and proves its execution; and accounts for the want of a conveyance from the former proprietor of the garden, by saying that a deed of sale was lost on an occasion when his house was searched, and that he gave due notice of the loss at the time.

The defendants produce a pottah limiting their lease under the plaintiff to five years.

The moonsiff has rejected the kubooleut filed by the plaintiff as newly written and spurious, has upheld the pottah and receipts, has discredited the story regarding the loss of the deed of sale, and dismissed the plaint.

It appears to me more safe to treat the kubooleut as a document of but little value as proving the plaintiff's title than to reject it as a fabrication: it does not specify any period for which it was to be in force and might determine at any moment. There is no reason to question the pottah, and that serves to show what the defendants' liabilities are. I do not think that the way in which the plaintiff accounts for the want of title deeds is satisfactory; although on the occasion of his house being searched he may have given notice of the loss of a certain document, yet there is no perceptible connexion between the two events. There is nothing in the one event, the search, to cause the other, the loss of the document. The plaintiff has failed to establish his case. I confirm the moonsiff's order, dismissing his suit.

THE 4TH APRIL 1850.

Case No. 3 of 1850.

Appeal from the decision of Gopal Chunder, Moonsiff of Bhathooreuh, dated the 11th December 1849.

Pubcettra Dasse, (Plaintiff,) Appellant,

versus

1, Ameer Chund Ghose Mundul, 2, Ram Chund Ghose Mundul, and others, (Defendants,) Respondents.

THE plaint states that Ameer Chund, and Manick Chund Ghose, the father of the defendant No. 2, borrowed from the plaintiff rupees 60, executed a bond for the amount under date 26th Aulhun 1244, pledging a julkur jumma, paying a yearly rent of 3 rupees, as security for the amount; that Ameer Chund paid back rupees 57, out of which rupees 31, annas 6, gundahs 8 was credited to interest, the remainder, rupees 25, annas 9, gundahs 12, went in liquidation of the principal, leaving a balance of rupees 34, annas 6, gundahs 8, on which a further sum of rupees 27 had again accrued as interest, making a total of rupees 61, annas 6, gundahs 8, for which this action was brought.

The defendants repudiate the bond, and declare their perfect ignorance of the person and residence of the plaintiff and of the whole transaction, allege that the julkur, said to have been pledged in the bond, was not leased unto them until 1255, from which circumstance the falsity of the plaint may at once be perceived.

In her replication, the plaintiff describes herself as the widow of one Prem Chaund Mundul: alleges that she is well known as a money lender, and declares that the julkur may be traced in the zemindary accounts for years back.

Sukkoo May Guptoo and others, proprietors of the estate in which the julkur is situated, appearing as third parties, support the defence.

The moonsiff remarks that it is extremely improbable that a woman with two sons of mature age should herself engage in loan transactions, also that it is extremely improbable that she should herself appear before the witnesses, who depose to having seen her pay the money; he also considers the writing on the bond too new in its appearance for the time for which it has been written; he remarks also that the plaintiff failed to produce the actual writer of the bond, whereas the witnesses produced, live in five distinct villages. The plaintiff also failed to produce any accounts of the money transactions in which she said that she was engaged. For these reasons the moonsiff dismissed the suit.

None of the above reasons appear to me conclusive against the plaintiff, whose story appears to me consistent. The tangible part of the defence was the assertion that the jheel had not come into the hands of the defendants at the time of its alleged hypothecation. Now although the statement of the defendants is supported by the present holders of the village, yet it appears incidentally that the plaintiff filed papers of the former zemindars to prove that the julkur was formerly in the hands of her alleged mortgagors; the moonsiff does not notice this fact in his proceedings except to direct the return of the papers. On comparison of the bond with other documents of the same year, there is no reason to suspect that the ink is new. I consider that the moonsiff has arrived at a hasty conclusion in this case, and send it back that he may re-consider the whole question, more particularly with reference to the former history of the julkur, and the writing of the bond itself. He will also again permit the plaintiff to subpoena the writer of the bond. in order that his evidence may be taken.

THE 4TH APRIL 1850.

Case No. 4 of 1850.

Appeal from the decision of Nobin Kisto Paulit, Moonsiff of Cutwa, dated the 13th April 1849.

Kisto Mohun Gurrain, (Plaintiff,) Appellant,

*versus*1, Nuzeeboodeen Duffadar Nikaree, 2, Tarrachund Nikaree; 3, Bud-doo Nikaree, and 4, Zumeer Nikaree, (Defendants,) Respondents.
Dunmonee Dossee and others, Claimants.

VALUE of suit, rupees 31-4-8.

The plaintiff sues for the above amount from the defendants in virtue of their kubooleut, agreeing to pay rent for a mangoe orchard.

Defendants Nos. 1 and 2 admit the justice of the demand.

Defendants Nos. 3 and 4 deny that the plaintiff has any interests in the orchard, which they declare belongs to Dunmonee Dossee.

Dunmonee Dossee and others appear as third parties, and claim the orchard.

The moonsiff decides that the plaintiff has not proved his title and dismisses the suit.

The plaintiff, in appeal, complains of the summary dismissal as prejudicial not only to his claim for rent but to his real interests in the property; he contends that the case might have been nonsuited rather than dismissed.

I concur with the appellant in thinking that the dismissal was far too summary. The moonsiff, in his decision, merely remarks that the witnesses to the pottah are of very low caste, that it is impossible to say what the plaintiff's title is, and then dismisses the suit. Under such summary investigation an order for a nonsuit would have met the case. The moonsiff, having undertaken to decide the case, will make more careful enquiry regarding it, and then give his decision on its merits.

THE 8TH APRIL 1850.

Case No. 1 of 1850.

Appeal from the decision of Tuffuzzool Ruhman, Moonsiff of Ousgong, dated the 4th December 1849.

Ramessur Mookerjea, (Plaintiff,) Respondent,

versus

Lukneenarain Gangoolee and others, (Defendants,) Appellants.

THE appellants in this case, the defendants in the lower court, appeal against an adverse *ex parte* decree passed by the moonsiff of Ousgong, on the ground that they received no due notice of the

institution of the suit. On examination of the istehar, issued under Clause 2, Section 22, Regulation XXIII. 1814, it appears that the receipt for it is signed by Hurreechurn, the chowkeedar of Ramnuggur, the village in which the defendant resides, and which is situated in chowkee Mungulcoté, but the witnesses to the issue of the istehar are Kerta Nath Dome and Harradhun Dome, inhabitants of another village Sewbattee, which is situated in chowkee Ousgong. Under these circumstances the requisitions of Clauses 1, 2 and 3, Section 22, Regulation XXIII. 1814 do not appear to have been complied with. Moreover, the appellants complaining of undue haste in the disposal of his case, a further examination became necessary; from the result it appears that the issue of the istehar was witnessed under date November 12th, a return was made to the moonsiff by his nazir on the 13th, on the 17th the court was closed until December 3rd, on that same day the plaintiff proved the issue of the istehar, and on that same day the moonsiff held proceedings in his case, calling for his proofs in the case; on the next day, the 4th of December, the plaintiff produced his proofs, and on the same day the moonsiff decided the case in his favor.

On examination of the proofs filed before the moonsiff, I find that the plaintiff relied upon a bond, which bond was filed by himself, instead of through any of the regular pleaders of the court, and in the bond itself are the most evident symptoms of alterations and erasures, none of which are, in any degree, accounted for, although they were duly reported to the moonsiff by the record keeper of his court. The moonsiff appears to have entirely overlooked the provisions of Clause 1, Section 21, Regulation XXIII. 1814, which direct that judges must examine the evidence of the plaintiff before deciding in his favor. A very cursory examination would have sufficed to show that the condition of the bond precluded its admission without great caution.

As under the circumstances of the case no trial has yet taken place, I will confine my remarks to an expression of opinion that the case must be re-tried.

The moonsiff being called on to explain whether the case decided by him in such haste had been taken up in regular order on the file, answered that it had not, for, if he took cases up in regular order, he could not complete his complement of decisions in each month. His file, being examined, showed that there were forty-four cases intervening on his file between the last one decided and this particular case.

Under these circumstances, I deem it right to send the case for re-trial to another moonsiff. The moonsiff of Bamunara will be directed to place the case on his file, and to pay particular attention to the bond, and to take the necessary steps for bringing the guilty parties to punishment should the bond prove to be a forgery.

In the event of the plaintiff's absence the moonsiff will not strike the case off for default, but will send the papers back to this court, in order that the bond and the proceedings of the moonsiff may be submitted for the further consideration and orders of the presiding judge.

THE 8TH APRIL 1850.

Case No. 5 of 1850.

Appeal from the decision of Nobin Kisto Paulit, Moonsiff of Cutwa, dated the 3rd December 1849.

Khettronath Seal, (Plaintiff,) Respondent,

versus

Deenbundo Dutt, (Defendant,) Appellant.

VALUE of plaint rupees 61, 2 annas, 8 gundahs.

This was a suit for a balance of an account.

The plaint states that Bissnumber Seal and Prankissen Seal, father and uncle to present plaintiff, carried on a joint business in Cutwa: on their death plaintiff succeeded them. The defendant was indebted to the firm to the extent of 61 rupees, 2 annas, 13 gundahs, as by accounts closed 29th Jyete 1246, that being the last date on which any payment was made by defendant. The plaintiff sued him for the amount on a former occasion, but the case was struck off from default. Hence the delay in bringing the present action.

The defendant admits that there were transactions between himself and the firm on account of which the plaintiff sues, but declares that the balance is in his favor, and that it was from the knowledge that a comparison of accounts would be to his disadvantage that the plaintiff was induced to forego his former action.

Neither accounts were attested by witnesses; the plaintiff produced a witness, who could neither read nor write, but who gave evidence of a parole admission of the defendant of the accuracy of the plaintiff's accounts.

The moonsiff compared the accounts of the two houses, but treating the case as one of evidence rather than account, he declared the books of the plaintiff to be most trustworthy; and having thus established them as the standard of reference, called on the defendant to prove the items in his account, which were at variance with those of the plaintiff. The defendant having no proofs to bring forward, the moonsiff decreed in favor of the plaintiff.

The decision of the moonsiff appears to me unsound; he had no sufficient ground for awarding an arbitrary superiority to the plaintiff's accounts. The plaintiff's accounts filed in the abstract run thus—

Former Balance,	Years.	Charge.			Discharge.			Balance to Plaintiff.		
		Rs.	As.	Gds.	Rs.	As.	Gds.	Rs.	As.	Gds.
	1243	94	6	15	3rd Bysakh,	4	0	0		
					32nd Sawun,	28	6	5		
						32	6	5		
	1244	62	0	10		1	14	0	62	0
	1245	60	2	10		1	14	0	60	2
	1246	58	4	10		0	15	0	58	4
									57	5

This last balance, converted from Siccas into Company's, is the subject of the present action.

The defendant's books are filed in detail for the year 1243.

They show a charge.				Discharge.			Balance in favor of		
Rs.	As.	Gds.		Rs.	As.	Gds.	Rs.	As.	Gds.
For the year 1244,	3,259	10	10	3,197	3	15	62	6	15

The accounts do not close at the same period. The plaintiff's accounts are written up to 32nd Sawun. The defendants up to 17th Bysakh. From this it happens that a sum of 28 rupees debited by the plaintiff in his accounts for the year 1243, is not credited by the defendant until his accounts for 1244. Therefore although there is an apparent correspondence in the balances for 1243, yet there is an essential difference of 28 rupees; and for this 28 rupees the accounts of the defendant seem to me equally trustworthy with those of the plaintiff. The absence of all explanation of this discrepancy renders it impossible to decide the case at present. The papers must be sent back to the moonsiff, with orders to balance both accounts up to the same date, and then to decide between the parties.

THE 15TH APRIL 1850.

Case No. 6 of 1850.

*Appeal from the decision of Nazirooddeen Mahomed, Mooniff of Mun-
glécote, dated the 5th December 1849.*

Benee Madhub Bhuttacharje and others, (Plaintiffs,) Respondents,
versus

Gopee Mohun Sawunt, (Defendant,) Appellant.

PLAINT for 44 rupees, 12 annas, 9 pie, monies lent.

The plaintiffs sue upon a bond, dated 6th Jyete 1244, executed in favor of Nuffer Chund Bhuttacharje, deceased; the interest being charged beyond the legal rate, the demand for it is abandoned.

The defendant, denies the execution of the bond and the receipt of the loan, asserts that he was a minor at the time of execution,

being then only sixteen years old; he also pleads the statute of limitations, because a period of eleven years, eleven months, and five days has elapsed since the alleged date of execution; he also asserts that from the commencement of Poos 1243 up to Assar 1244, he was absent, being engaged as a priest in the rajah's temple at Eechuck Ramghur; he denies the signature, and requests that it may be compared with his writing on other occasions.

*The moonsiff overruled the plea under the statute of limitations, and proceeded to decide on the bond itself. The plaintiffs refused to call four out of the seven attesting witnesses; and the signatures of those who were called, were written in ink not corresponding with that in which the other signatures were written, but the defendant himself admitted that the signature on the bond corresponded with his handwriting, thereby, to a certain extent, admitting the execution; on comparison also the signature agreed with the defendant's handwriting. The moonsiff also argues that if the bond had been forged, the interest would not have been charged at an illegal rate, and the writing would have been in the same ink. There is also evidence that the defendant was of age when he borrowed the money; a horoscope filed by the defendant, was not admitted by the moonsiff as having not been filed in due time, and being in itself of no value. The witnesses, brought forward to prove the absence of the defendant, were rejected as dependants of the defendants of the rajbarree; it was also argued that it was improbable that a minor should have been employed as a priest at a distant station; there are also discrepancies between the evidence of the witnesses brought to prove the *alibi*, and the plea put in regarding the *alibi*; the witnesses proving an absence of two years, whereas the defendant only pleads to an absence of ten months. Under the force of this reasoning the moonsiff decided in favor of the plaintiff.*

The defendant, in appeal, takes exception to every argument in detail, and lays particular stress on the proof of the *alibi*. It does not appear to me that there is any such distinct evidence on this head as to vitiate the direct evidence as to the execution of the bond; the defendant was compelled to admit that the signature to the bond very closely resembled his own handwriting, and the bond itself has all the appearance of a genuine instrument; a forged bond would not have been so distant in date, and would not have borne interest at an illegal rate. I consider the loan to have been a *bona fide* transaction, and confirm the decision of the moonsiff.

THE 15TH APRIL 1850.

Case No. 392 of 1849.

Appeal from the decision of Nobin Kisto Paulit, Moonsiff of Cutwa, dated the 23rd October 1849.

Ramkissen Raie, (Plaintiff,) Respondent,

*versus*Deenbundoo Dutt, Hungsessor Bhuttacharje, and others,
(Defendants,) Appellants.*VALUE of suit rupees 51, 14 annas.*

Plaintiff sued the defendants for the value of the produce of an orchard of mangoe trees and jack trees for the year 1255.

The defendants admit the plaintiff's title to half the produce of the garden, but declare that there was no produce in the year in question, the whole of the fruit having been lost in consequence of a quarrel arising between the plaintiff and Hungsessor Bhuttacharje, defendant No. 2, as to the payment the other was to receive for watching the garden.

The moonsiff considered the defence insufficient, because the paid watchman and manager ought to have sold the fruit, and to have left the payment of his own wages for subsequent adjustment; but so far from the fruits having been spoilt, there was evidence that it was sold or made use of by the defendants: under these circumstances the moonsiff decreed the amount against them.

Deenbundo, the appellant in this court, urges that he cannot be held reponsible for the acts of the servant of himself and partner; and pleads that the only liability as yet established has been solely against Hungsessor Bhuttacharje. The witnesses, however, for the plaintiff prove the appropriation on the part of this appellant fully as much as on the part of Hungsessor Bhuttacharje; and it appears to me that the appellant is really the responsible person. Under these circumstances, I confirm the decision of the moonsiff.

THE 15TH APRIL 1850.

Case No. 394 of 1849.

Appeal from the decision of Pearee Mohun Bonnerjee, Moonsiff of Kyfee, dated the 27th November 1849.

Muthoor Mohun Mullick, (Plaintiff,) Respondent,

versus

Becha Ram Raie and others, (Defendants,) Appellants.

PLAINT for 31 rupees, 9 annas, 3 gundahs, 1 cowree.

The plaintiff sued the defendants for a principal sum of twenty-one rupees, being a balance of rent accruing on their jumma during a period of eleven years, from 1244 to 1255, as shown by the accounts of the village, duly attested by the gomashtha.

It appears that the jumma pays a rent of nine rupees, nine annas, twelve gundahs, and is registered in the names of Jug Mohun Raie and Becha Ram Raie, but is held by a number of coparceners. Various coparceners plead that they have discharged their individual liabilities, but there is no evidence of any final discharge and acquittance of the whole of the plaintiff's demand. On the other hand, the accounts given in by the plaintiff show an outstanding balance of twenty-one rupees against the whole jumma. The defendants had every opportunity of proving payments in full. On their allegation that they had sent a paper calculated to prove this, to be stamped, I delayed my decision, but as the paper is not forthcoming, and as the existence of the debt and the joint liability have been established, I must decide against them. The moonsiff's decision is confirmed.

THE 18TH APRIL 1850.

Case No. 405 of 1849.

Appeal from the decision of Mr. J. S. Bell, Moonsiff of Burdwan, dated the 5th November 1849.

Bonee Beebee, (Plaintiff,) Appellant,

versus

Sheik Dhunnoo, (Defendant,) Respondent.

THE plaintiff sued to recover a house and some ground, from which she had been ousted by the order of the magistrate passed under Act IV. 1840. The case had been before this court and had been sent back for re-trial by Mr. Luke, *vide* his decision, page 52 of the Decisions for the month of April 1849.

The city moonsiff was directed to ascertain the exact amount of land occupied by Sheik Buxoo, and to take further evidence as to the occupation. He ascertained that the quantity of land occupied by Sheik Buxoo was 12 chittacks, and then recorded his opinion that his occupation was only by sufferance, and that Sheik Dhunnoo had proved his title to the entire plot of ground, and accordingly dismissed the case of the plaintiff.

On examination I find that, by the defendant's own admission, the plaintiff's father was in undisturbed possession from 1228 to 1243, and that his wife and daughters succeeded him, though not always as resident occupants, yet as retaining a lien and opposing all endeavours on the part of the defendant to oust them. On the 14th May 1847, a decision was passed in which they appeared as third parties, and in which their title was virtually recognised. To nullify or counteract the effects of this decree, the defendant sued for possession under Act IV. 1840, and was declared to be in possession. The plaintiff sued him again in this present action in order to reverse that decision. Now it is very evident that if the defendant, instead

of having recourse to Act IV. 1840, had at once sued for possession in the civil court, that he would have been thrown out of court, inasmuch as the court would have been incompetent to enquire into a title of more than twelve years' standing. I do not think that a wrongful decision under Act IV. 1840, should so far alter the position of the parties as to compel the plaintiff to prove a title other than that which she had obtained under the statute of limitations. To give such an effect to decisions under Act IV. 1840, would be to open an easy way of defeating titles relying on prescription, in every case in which there had been no recent occupation on the part of the rightful owner. The decision of the moonsiff is reversed as far as regards the 12½ chittacks of land, formerly occupied by the plaintiff's father.

THE 18TH APRIL 1850.

Case No. 7 of 1850.

Appeal from the decision of Seetee Kaunt Singh, Moonsiff of Pothna, dated the 19th December 1849.

Dewee Pershad Mitter, (Plaintiff,) Appellant,

versus

Bissen Ram Raie, Pertab Raie, and others, (Defendants,) Respondents.

PLAINTIFF states that, in his official capacity of furosh ameen, he was charged with the sale of certain effects; that Bisto Ram Raie purchased goods to the value of thirty-six rupees, and the receipt being ready he took it up, making only an immediate payment of five rupees on account of fees; that on seeing this the plaintiff asked for his receipt again; but the defendant gave the receipt to Pertab Raie, who went off with it: the defendant went off without paying. The plaintiff then applied to the moonsiff for redress, but his application was rejected; he then applied to the judge, who also refused him assistance; he therefore has recourse to a regular suit.

Bisto Ram, defendant, answers that he paid the money before he got the receipt.

Pertab Raie answers, that he saw the first defendant pay the money, and denies having carried off the receipt.

The moonsiff refers to the investigation which took place, when the plaintiff first charged the defendant with the robbery of the receipt; he remarks that the only new evidence adduced by the plaintiff, the deposition of one Lall Mullick, varies from that of his former witnesses in the case, also that the evidence of one Seebchunder Hazra was taken through the cazee at the instance of the plaintiff, but it does not further his case.

The appellant appeals on the ground that this case has not met with sufficient care. On re-consideration I cannot believe the statement of the plaintiff. It is so extremely improbable that he should have prepared the receipt before the money was brought to him, and had left it thus exposed to the defendant, and that on the occurrence of the loss he should not have had recourse to the assistance of the police, or at once have called upon his attendants to detain the defendant, or have taken some more active steps to prevent the fraud. I see nothing in the case to make me doubt the soundness of the moonsiff's decision, which I confirm.

THE 22ND APRIL 1850.

Case No. 9 of 1850.

Appeal from the decision of Pearee Mohun Bonnerjea, Moonsiff of Kytee, dated the 10th December 1849.

Ramloll Dah, (Plaintiff,) Appellant;

versus

Narain Bagdee, (Defendant,) Respondent.

VALUE of plaint, rupees 58, annas 14.

This is a suit upon a bond for 40 rupees alleged to have been executed under date 26th Kartick 1249.

The defendant denies the execution of the bond, and attributes the plaint to malice on the part of the plaintiff.

The moonsiff discredits the bond and the testimony of the three attesting witnesses, who do not agree with each other.

The appellant, in appeal, affirms that the document is genuine: in proof of this he avers that the defendant had proposed to compromise the claim since the institution of the action; also offers proof of the existence of transactions between himself and defendant: he also offers to prove the offer to compromise by the pleaders of the moonsiff. The moonsiff discredits the bond because the paper seems old and the writing new. On examination I see no reason to suspect the writing on the score of its showing symptoms of being recent. The discrepancies in the evidence of the witnesses are such as were susceptible of explanation, if the moonsiff had taken any trouble to clear them up. The moonsiff's decision does not manifest any such care as should be used before denouncing a document as a forgery. The careless rejection of documents conduces as much to encourage forgery, as the careless admission of them, inasmuch as men in this case equally lose sight of the distinction between right and wrong.

The moonsiff must try the case over again, and expend more labor and care upon it.

THE 23RD APRIL 1850.

Case No. 384 of 1849.

*Appeal from the decision of Kasee Nazirooddeen, Moonsiff of Indoss,
dated the 23rd October 1849.*

Khetter Mohun Doss, (Plaintiff,) Respondent,

versus

Nund Lall Sing, (Defendant,) Appellant.

VALUE of suit, 36 rupees, 14 annas.

This was a suit upon a bond for 25 rupees, which, according to the declaration of the plaintiff, was executed under date 12th Sawun 1252.

The defendant denied the execution, and pleaded that on the date of alleged execution he was present at the Balkissen thanna in discharge of his duty as burkendauz. In proof of this he proposed to obtain, from the records of the magistrate's office, copies of papers showing that he was on that day deputed from the thanna on special duty.

On the 28th August 1849, the plaintiff produced three witnesses before the moonsiff, who testified to the execution of the bond; on that same day the defendant was desired to bring the proofs of his defence. On the 23rd October the moonsiff took the case up, and, in the absence of the promised proofs on the part of the defendant, decreed the case in favor of the plaintiff.

In appeal before me, the defendant reiterated his assertion that he had proofs, but that from their very nature they could only be obtained after laborious search amongst voluminous records in the magistrate's office; he pleaded also that, being a servant of the Government, he had not the same leisure to attend to the case as if he had been a private individual. The pleas appeared to me to deserve attention, and the appeal was admitted and the respondent duly summoned.

To-day the appellant produced a certified copy of a process from the thanna, showing clearly that he was entrusted with a particular duty at the thanna of Balkishen on the day on which the bond was said to have been executed. This was also corroborated by the return made to the magistrate in the case by the darogah. There was no reason to suppose it possible that these documents could have been got up to meet the case; in fact they were in the magistrate's office before the suit was instituted, the thanna being twenty-four miles from the place in which the bond was said to have been executed: the defence appears to have been clearly established. The plaintiff did not appear to rebut this new testimony. Under these circumstances I reverse the decision of the moonsiff, and direct the payment of all costs of suit by the respondent, the plaintiff in the case.

THE 23RD APRIL 1850.

Case No. 25 of 1849.

Appeal from the decision of Moonshee Mahomed Sayem, Sudder Ameen of Burdwan, dated the 29th May 1849.

Brijo Mohun Raee, (Plaintiff,) Respondent,

versus

J. B. Richards, (Defendant,) Appellant.

AMOUNT in appeal, 50 rupees, 4 annas.

This was an appeal on the part of the defendant, who had been released from all liability in the sudder ameen's court in the matter of an original suit, but who had nevertheless been left to pay his own costs, which he asserted was unjust, inasmuch as he had been made defendant in the cause without any reason whatever.

It appeared that the plaintiff had brought an action against one Gopal Doss Byragee, who had previously obtained a decree against him, and had sold the said decree to the present appellant. The plaintiff, averring that the sale was fraudulent and the result of a conspiracy to reduce the assets of his defendant, sued the purchaser of the decree, the present appellant, together with the defendant, Gopal Doss.

The sudder ameen, in his decision, released the appellant from all liability in the suit against Gopal Doss Byragee, but left him to pay his own costs. Against this part of the decision he has appealed.

It appears that the appellant bought the decree before the respondent had instituted any suit against the Byragee; there is no evidence to show that he was cognizant of the respondent's intention to bring the action. The sale of the decree was made openly and with the observance of all prescribed formalities. There was no reason why the respondent should have made the appellant a defendant in his suit against Gopal Doss Byragee. It is not just that the appellant should be called on to pay costs incurred solely by the respondent's wilful and unnecessary suit against him. The decision of the sudder ameen must be amended, and the respondent must pay the costs of the appellant in his, the respondent's, suit against the Byragee.

THE 25TH APRIL 1850.

Case No. 1 of 1850.

Appeal from the decision of Moulvee Fuzzul Rubbee, Principal Sudder Ameen of Burdwan, dated the 15th December 1849.

Gudadhur Pershad Tewarree, (Plaintiff,) Respondent,

versus

Cazee Khoda Newaz and Chumpa Koomaree Debya, (Defendants,) Appellants.

VALUE of original suit, rupees 1,867, 4 pie. Amount in appeal, rupees 1,867-4.

This was a suit for the rent of a putnee mehal for the year 1254.

The defendant admitted his liability for the full amount of rent, but contended that he should not be called on to pay interest, because the delay in payment arose solely from his uncertainty to whom he was to pay; this uncertainty, he pleaded, was caused by the plaintiff's own conduct. He then stated that, in the year 1252, the plaintiff conveyed his property to his sons by means of a document called a willnameh, according to the provisions of which his wife was made guardian of the sons, and the estates immediately passed under her control as guardian. This document was registered and collections were made and receipts given in the name of the plaintiff's wife for the years 1252 and 1253. In the year 1254 the plaintiff endeavoured to effect a mutation of names, and to get his wife's name registered as proprietor of the estate instead of his own. Some third parties objected to this, on the ground that the proposed alienation was fraudulent and fictitious, got up solely with the intent of defrauding the creditors of the plaintiff. The collector, under these circumstances, refused to effect the mutation, and this refusal was confirmed by the Board of Revenue. Moreover the collector refused to sell putnee talooks under Regulation VIII. 1819, at the instance of the alleged manager under the will. The defendant then doubted whether he was secure in paying his rents to the guardian, and, under date 17th October 1847, presented a petition to the collector, offering to pay his rents into the collector's office on account of Gudadhur Pershad Tewarree. The petition was retained in the office, but no notice of its presentation was given to the plaintiff. The guardian brought a summary suit for rent against the defendant, which was dismissed August 26th, 1848, on the ground of the non-registration of the plaintiff in the summary court. Eventually the conveyance to the plaintiff's children was set aside by a summary order of the Sudder Court; then the guardian abandoning her claims under it, the present plaintiff brought his action in his own name for both principal and interest.

The principal sudder ameen decided in his favor, decreeing both principal and interest.

In appeal before me, it is urged that the plaintiff has, by suing in his own name, stultified his own previous averment that his interest in the property has ceased, and justified the defendant's refusal to pay except to his receipt. Against this argument must be weighed the fact that the defendant had, by the payment of rent for two years, acquiesced in the arrangement to which he subsequently demurred, and that the plaintiff had no notice of his demurrer until he pleaded it before the collector on the 26th August 1847. It must be admitted that the plaintiff's subsequent acts have stultified his former one; but there is the question whether there was any thing which justified the defendant in his refusal to pay, and whether he gave sufficient notice of his motives and intention of refusing payment. The defendant does not pretend to have questioned the previous existence of Gudadhur Pershad Tewarree's interests, but only the validity of his alienation. The point to be determined is whether he was competent to have entertained this question. He asserts but does not prove that he might have been liable for double payments; to make this assertion of any value he should have proved some notice of sequestration or attachment served upon himself, or the tenants generally, such as to destroy the plaintiff's lien on the rents; until he was so warned he was bound to pay to the plaintiff, or to his representative, or to give him notice of refusal to pay, such refusal being nevertheless at his own risk. The first recorded notice of the grounds of the refusal to pay, was when they were pleaded before the collector; and up to that time the defendant was, in my opinion, bound to pay as he had done heretofore. After this it is very doubtful whether he was not liable to pay; had the representation of the estate continued in the same hands, there would have been no doubt on the subject; but as the plaintiff has by subsequently suing in his own name confessed that the representation was defective, the defendant must be released from liability from the time that he can prove that he gave notice of his objection to the representation in which he had previously acquiesced. This date has already been fixed on the 26th August, the date of the dismissal of the summary suit, on the plea of defective representation. Each party will pay his own costs.

THE 26TH APRIL 1850.

Case No. 3 of 1850.

Appeal from the decision of Moulvee Fuzzul Rubbee, Principal Sudder Ameen of Burdwan, dated the 21st January 1850.

Syud Kurreemooddeen, (Plaintiff,) Respondent,

versus

Goseyn Das and others, (Defendants,) Appellants.

VALUE of suit, rupees 1,231, annas 15, gundahs 15.

This was a suit to recover arrears for the year 1253, which had accrued with interest upon a farm of mehals Dasteeparah, &c., in all six villages, which had been leased at a rent of rupees 2,999, annas 12.

The defence is that the full amount has been paid to the plaintiff's agent, whose receipts the defendants hold with the exception of one for rupees 90.

The principal sudder ameen ruled that the farming engagements, under the guarantee of Neel Madhub and Hullodhur, had been completed, and that Neel Madhub Doss being dead, his son, Gopal Doss, had succeeded him; he also found, from examination of the accounts, that the payments made by the defendants amounted to rupees 2,043; he also found that although there was no condition to that effect in the bond, yet that, under certain published decisions of the Sudder Court, the engagements of the deceased surety were binding upon his heirs; he also rejected various receipts filed by the defendants, in proof of the payment of the full amount of their rent, and discredited the evidence of the attesting witnesses, who are none of them resident in the place where payment was made, and whose evidence as to the absolute payments was not worthy of credit: on the strength of these findings he decreed in favor of plaintiff.

The grounds of appeal are that undue weight has been afforded to the evidence for the plaint, whilst that for the defence has been comparatively overlooked. The following statement will show the condition of the accounts between the parties:

Dates of dakhilas filed by defendant.	Amount.	Amount credited.	Date of credit.	Disputed.
	Rupees.	Rupees.		
17th Bhadoon,	1002	1002	23rd Bhadoon,	
7th Poos,	500	0	.....	500
12th Chyte,	857	857	12th Chyte,	
25th Ditto,	200	0	.....	200
15th Bysack,	49	49	15th Joist, ...	
18th Ditto,	101	101	18th Bysack,	
21st Ditto,	200	0	.....	200
8th Assin,	0	20	.....
24th Assar,	14	14	24th Assar,	
Amount for which } there is no receipt, }	76	0	.....	76

The amounts in the last column are the sums under dispute.

On examination of the papers, I find that the plaintiff's case is supported by the village accounts attested by one witness, and that the principal sudder ameen has rejected the receipts given in by the defendants for all sums not entered in those accounts, because he discredits the evidence of the witnesses to the payment. These receipts are all signed by the same person, and there is no perceptible variation between those for the sums for which credit has been given, and those for the sums for which credit has not been given.

The writer of the receipts has not been examined. It was more particularly the duty of the plaintiff to bring forward the evidence of this person, as his plaint had already been dismissed in a summary suit, because the defendants brought forward these receipts. As the case stands now, the defendants produce receipts which have not been repudiated by the person who is said to have given them. The absence of credit in the accounts is no proof that the payment was not made to the plaintiff's agent and not brought to account. The only decision as yet given has been as to the credibility of the witnesses to the dakhilas, and not the dakhilas themselves. I do not see any sufficient reason for setting aside the testimony of these witnesses. The case must go back to the principal sudder ameen, who will take the evidence of the writer of the receipts, and then give a decision as to the value of the receipts themselves.

THE 27TH APRIL 1850.

Case No 278 of 1849.

Appeal from the decision of Pearee Mohun Bonnerjea, Moonsiff of Kyttee, dated the 21st June 1849.

Bungshee Dhur Bagdee, (Plaintiff,) Appellant,

versus

Roopchand Bagdee, (Defendant,) Respondent.

VALUE of suit, rupees 29-2-16. Value of amount in appeal, 18-2-16.

The plaint states that plaintiff and his four brothers held their chakaran lands (twelve beegahs) in joint tenancy, and discharged their duties as chowkeydars; on the death of one of the brothers, Ram Bagdee, he left a son, a minor,—Roopchand, the present defendant. On Roopchand's coming of age, he applied to be reinstated in his share of the lands; this was done through the magistrate, and Roopchand was put in possession of eight beegahs and a half, and three beegahs and a half were left in possession of plaintiff to support him during his life. This arrangement was effected in 1249; but Roopchand dispossessed the plaintiff in 1255. The plaintiff therefore sought his remedy in the civil court.

The authorities, on the part of Government, plead that they are not liable in the case. The defendant pleads that the plaintiff's portion was given to him on the condition of the performance of service according to his orders; the plaintiff having failed to perform this condition, he had forfeited the land. The plaintiff denies the existence of any condition of service.

The moonsiff ruled that there was no proof of condition of service in the tenure, and found for the plaintiff as far as regards the possession, but only awarded him seven rupees as wassilat instead of eighteen, on the plea that the defendant could not afford to pay more, and at the same time discharge his duties efficiently. The plaintiff appeals against this part of the decree.

I cannot agree with the reasoning of the moonsiff. The respondent has not come forward to show cause why he should be treated with the leniency proposed by the moonsiff. The moonsiff's decision must be modified; the plaintiff will receive the full amount of mesne proceeds.

THE 29TH APRIL 1850.

Case No. 33 of 1849.

Appeal from the decision of Moonshee Mahomed Sayem, Sudder Ameen of Burdwan, dated the 26th July 1849.

Goordyal Sing, (Plaintiff,) Respondent,

versus

Thakoor Doss, (Defendant,) Appellant.

Dumber Sing, third party.

THE plaintiff sued to recover property mortgaged to him, and to set aside a sale by which the said property had passed into the hands of the defendants. As the sale had been made with an express notice of the plaintiff's claim upon it, the second declaration in the suit was unnecessary. .

The mortgage bond was dated Jyte 24th, 1249, or 5th June 1842 A. D.; the pledge was redeemable in five years; notice of foreclosure had been issued December 16th, 1846.

The defendants, the purchasers at the sale, contended that the sale was without consideration and fraudulent, merely got up to set aside the claims of creditors under decrees of court. They objected to it on the following grounds; that the alleged purchaser was not a man of sufficient substance to advance the sum said to have been lent; that the evidence to the execution of the bond and payment of the sum advanced was not trustworthy; that the bond was not registered; that part of the property included in the bond had already been attached and advertised for sale, and subsequently sold by private sale to the attaching creditor, one Dumber Sing, without any opposition on the part of the alleged mortgagee; that although one Umeid Sing was a shareholder to the extent of one-fourth, yet he is not amongst the parties to the mortgage; that the stamp on which the deed was engrossed was purchased in Calcutta, and not in the neighbourhood of either of the parties to the mortgage.

The sudder ameen rejected the parole evidence as to the poverty of the purchaser; and also to the fact of Umeid Sing's being a shareholder in the property mortgaged; he found with reference to the private sale made by the mortgagor to Dumber Sing, that such sale could not prejudice the right of the prior mortgagee; he did not notice the other objections, and decreed in favor of the plaintiff, but found it necessary to exclude from his decree four items of property, for which the plaintiff had sued, although they were not included in the mortgage bond.

The appellants reiterate their former objections, and urge particularly, as evidence of collusion between the plaintiff and his alleged mortgagor, that the latter did not oppose him in court, even when he sued for property not included in his bond. There are some

points in the case which have not been considered at all by the sudder ameen, some which have not been duly weighed with reference to their bearing on the case. The evidence to the payment of the sum said to have been advanced, is far from satisfactory. There are discrepancies as to how the money was received, and where it was placed, and whether it was tested. It is also shown by a fresh exhibit filed to-day, that one of the witnesses must have been on duty as a burkendauz in the Burdwan thanna, from which the place in which the transaction occurred was sixteen miles distant. The want of registration must also have weight amongst other suspicious circumstances. The plaintiff has offered no evidence to show that he was a man of sufficient substance to render it probable that he should have made the advance. The question to be tried by the sudder ameen was not whether the sale to Dumber Singh would hold good or not, but whether the absence of all opposition on the part of the alleged mortgagee, when the property was attached and advertised, was not evidence of the absence of any lien on his part. It is admitted that the plaintiff is a connexion of the mortgagors, their houses are not very far distant, it is hardly possible that the plaintiff should not have been cognizant of the attachment and advertisement for sale, and have failed to prefer his claim, if he had a good one. The title of Umeid Singh to a fourth of all the property pledged is not clearly established; yet it has been shown that he had some interest in the property, and that his consent was necessary before it could be alienated, and yet his name does not appear amongst the mortgagors. There is no satisfactory reason given for the purchase of the stamp in Calcutta. It was impossible that the former proprietor, the alleged mortgagor, should not have been interested on one side or the other; he is described by either party as conspiring with their adversaries. Had the existence of the mortgage been a fact to which he assented, he at any rate would have come forward to save the property not included in the bond, and which was sold at a very low price in consequence of the notice of the plaintiff's claim upon it. My opinion is that a conspiracy existed between the alleged mortgagees and the judgment debtor, and that the claim under the mortgage bond was fraudulent. I reverse the decision of the sudder ameen, and decree against the plaintiff, with costs.

THE 30TH APRIL 1850.

Case No. 403 of 1849.

Appeal from a decision of Mr. J. S. Bell, Moonsiff of Burdwan, dated the 3rd November 1849.

Moollah Mahomed Hossein *alias* Tofeil Moollah, (Plaintiff,) Appellant,

versus

Zuhoorun Nissa Beebee and others, (Defendants,) Respondents.

IN this case the plaintiff sued to recover possession of a jack fruit tree, the ground on which it stood, (two cottahs,) and mesne proceeds calculated at 975 jack fruits.

The plaint states that the plaintiff acquired the tree by inheritance. The defence is substantially that the plaintiff has only an eight annas share in the tree. The plaintiff seeks to establish his title by parole evidence; he has utterly failed to prove his claim, except as far as it is admitted by the defendants. The moonsiff has dismissed the plaint.

When the case came before me in appeal, I was in doubt as to whether the plaintiff was not entitled to a decree for the proportion of the whole amount of his claim, which is admitted by the defendants to be his due; but his suit is so very disproportionate to his title that it will be difficult for the court to extract and decree to him the comparatively minute proportion to which he is entitled: his suit is for two cottahs of ground, the whole tree, and the value of 975 jack fruits; his title and the evidence as to the produce would not cover one-third of the claim, his present suit must be dismissed; but it is not my intention, unless the law bars the institution of a fresh suit, to defeat his claim to what he might obtain by suing for it in the right way. The decision of the moonsiff is upheld.

THE 30TH APRIL 1850.

Case No. 2 of 1850.

Appeal from the decision of Nobin Kisto Paulit, Moonsiff of Cutwa, dated the 4th December 1849.

Kartick Churn, (Plaintiff,) Appellant,

versus

Mudoo Soodun Mullick, (Defendant,) Respondent.

VALUE of suit, rupees 259, annas 4, gundahs 6. Amount in appeal, 55-5-11.

The plaintiff sued the defendant for a balance of account, amounting in all to rupees 259-4-6.

The defendant admitted that there had been a running account up to 25th Bhadoor 1255, and that he made payments on account up to Aughun 18th, 1255, and had received acknowledgments from

plaintiff's gomashtha; and that by his (the defendant's) account there were only rupees 67-4-10 left to be paid; that no transactions occurred after Aughun 18th, 1255.

The moonsiff, having compared the accounts filed on either side, found them to agree with the exception of three items; one to the amount of 140 rupees, which appeared both on the debit and credit side of the defendant's account, but did not appear at all in that of the plaintiff. As these items balanced themselves, they were only important as tending to throw doubt on the general accuracy of the plaintiff's account. It may have been for this object that they were inserted.

The next item in dispute, is an amount of 26 rupees, 13 annas, 15 gundas, brought over as the balance of some previous account. The moonsiff objects to this that the accounts of the year or transaction on which the balance accrued, ought to have been produced, but were not filed.

A further sum of rupees, 25 is also charged as interest. The moonsiff has disallowed this, because it is not clearly shown on what account, and in what manner the interest has been charged; in fact, it is not shown that there has been no contravention of Section 7, Regulation XV. 1793, or Act XXXII. 1839.

The appellant appeals against the disallowance of these two sums: he contends that the general correctness of his accounts has been established, and the defendant's denial has been shown to be futile; and that the item of 26 rupees does not require special proof more than any of the other items in the account. There being no evidence to prove that the accounts of the two "coties" balanced exactly at the close of the preceding year, it appears to me most probable that there should have been a balance on one side or the other; it is shown that the balance was generally in favor of the plaintiff, and I see no reason to doubt the accuracy of this charge. The defendant did not specially object to the charge for interest, and I do not think that the moonsiff was correct in disallowing it. As far as I can understand, it is only interest charged on the balance of the account, such balance, as has been already stated, being in favor of the plaintiff. I wish the moonsiff to take further evidence on this point, and to obtain from other bankers information as to the practice which prevails; if the existence of a practice is established, it will be equally binding as any expressed agreement. The case must be sent back to the moonsiff: he will allow the plaintiff to produce evidence as to the existence of the balance of the preceding year (26 rupees), he will obtain information and evidence as to what custom prevails with reference to charging interest, and will decide accordingly.

ZILLAH WEST BURDWAN.

PRESENT: H. C. HAMILTON, Esq., OFFICIATING JUDGE.

THE 2ND APRIL 1850.

Suit No. 199 of 1848.

*Appeal from the decision of Moulvee Noorul Hussein, Moonsiff of
Bishenpore, dated 18th April 1848.*

Nityanund Goshain, son of Bindrabun Goshain, Plaintiff,

versus

Sheebopershaud Chuckerbutty, Kumul Panjah, and another,
Defendants.

Sheebopersaud Chuckerbutty, Appellant.

SUIT to recover the value of rice, &c., as rent for the years 1253 and 1254 B. S., laid at rupees 15.

Plaintiff states that the defendants, ryots, tendered a kubooleut to his father on the 15th of Pous 1250 B. S., for the cultivation of the burmuttur lands of mouzah Benahbandee, which belonged to him and Sheebchunder Goshain. The produce was to be divided between the lakhirajdars and the ryots, at the rate of two-thirds for the latter and one-third for the former. During the years 1251 and 1252 B. S., it is alleged that defendants paid their revenue; but during the two following years having failed to do so, plaintiff sues them for his share only, leaving Sheebopershaud Goshain to receive his in any way he pleases: the produce of the rice, sursoo, &c., during the two years having been valued, his suit has been calculated thereupon, and laid at rupees 15.

Sheebopershaud Chuckerbutty is the only defendant who has appeared. He denies ever having jointly given a kubooleut as alleged, states that, as the other sharer has not joined in the suit with plaintiff, his case is clearly bad, he holds no land belonging to plaintiff, and begs plaintiff may be asked who cultivated the land in 1250 B. S. The real state of the case is, that the defendant possesses 30 beegahs of various description of mal land, at a jumma of rupees 9-8 per annum, appertaining to mouzah Jamlarah, and in part of it there was a dispute for $1\frac{1}{2}$ beegahs, from which defendant was dispossessed by Muddoosoodun Sundial and others, on which defendant brought an action, and, notwithstanding plaintiff filed a claim, it was overruled, and defendant obtained a decree. Plaintiff, to set aside this, has brought this action fraudulently.

In the opinion of the moonsiff, plaintiff has satisfactorily proved defendants' possession, and their liability to the payment of revenue agreeably to the conditions entered in their kubooleut; and, considering that defendants' witnesses were not to be trusted, he decreed the case in plaintiff's favor.

In appeal, it is urged that the case should have been tried under Section 30, Regulation II. 1819; plaintiff's witnesses are contradictory in their evidence; the kubooleut is a forgery; there is no mention of a kubooleut having been previously given to plaintiff by defendants, as stated by the moonsiff, in fysalah No. 226; and that, as he, appellant, has already obtained the land by a decree, he should not have been cast.

JUDGMENT.

This is a case of revenue dependent on the validity or otherwise of a kubooleut, which is alleged to have been given by the defendants to plaintiff's father, and the Section and Regulation quoted by defendants in appeal are inapplicable. The moonsiff has certainly made a mistake in stating that there is mention of a kubooleut in fysalah No. 226, dated the 31st December 1847, although it is clear by referring to that fysalah that the defendants, in that case, confessed judgment; that the point at issue referred only to 1½ beegahs of land; that it was specially specified therein that the claimant or plaintiff was not to be affected thereby; and that allusion is made to plaintiff having *settled* the land with ryots, though not by receiving any kubooleut, or granting a pottah. Nothing, in my opinion, has been advanced by defendant to establish the fact of the kubooleut being a forged document: on the contrary it has been clearly proved to be genuine, and the stamp paper on which it is written was purchased by one of the defendants, Kumul Panjah, who has not defended the suit. I see no reason, therefore, for interfering with the decree of the lower court, and I hereby confirm it, rejecting the appeal.

THE 4TH APRIL 1850.

Suit No. 216 of 1848.

Appeal from the decision of Moulvee Asudollah, Moonsiff of Radhanagore, dated 26th April 1848.

Bhagbut Khan, Plaintiff,

versus

Puteet Lohar and Sheebo Lohar, Defendants.

SUIT to recover the sum of rupees 45 cash, and value of rice, &c., 48-7, with interest, rupees 28-12, altogether rupees 122-3, agreeably to a kurrarnamah, dated 27th Bhadoon 1249 B. S.

Plaintiff states that defendants' deceased brother, Bydeenath, received cash from him for the repairs of the metial bund, and that the

defendants also received rice from him and rupees 45 in cash during the year 1249 B. S. The whole account was squared, a kurrarnamah was drawn up, on the 27th of Bhadoon 1249, by defendants, in his (plaintiff's) favor, and they promised to repay him in Assin 1250 B. S. Not being paid in kind or cash, plaintiff sues for the value of the estimated quantity of rice, with profits, and for the cash.

The defendants jointly reply by repudiating the agreement, and denying that they ever borrowed any money from plaintiff. They urge that plaintiff sued them in cases Nos. 80 and 81 for debts, and was cast, and this action has been brought through spite consequent thereupon.

Although plaintiff has produced the kurrarnamah and four witnesses to prove it, still the moonsiff cannot believe their evidence, and it is easy, he thinks, to procure witnesses of this description; and as plaintiff lost his two suits, Nos. 80 and 81, enmity no doubt exists; further, as defendants are common lohars, it is not likely they would require so much money as is now demanded by plaintiff; again, defendants do not appear to have received any cash on the day on which the agreement was written, and seem to have borrowed the rupees 45 on various dates, but it is not probable that plaintiff would advance money in this way: the moonsiff therefore dismissed the case.

Appellant (plaintiff) objects to the various suppositive reasons advanced by the moonsiff, states that suit No. 80 was remanded for re-trial, and has been since decreed in his favor, &c.

Sheeboo, one of the defendants, appears without summons.

JUDGMENT.

This suit rests entirely on the validity or otherwise of an agreement bond, and the arguments of the lower court being all founded on probabilities and possibilities are good for nought. No reasons are given *why* the moonsiff *cannot* believe plaintiff's witnesses or in what way they contradict each other so as to vitiate the bond. I therefore decree the appeal, and remand the case for re-trial with reference to the foregoing observations.

Value of stamp paper to be refunded.

THE 4TH APRIL 1850.

Suit No. 215 of 1848.

Appeal from the decision of Kaze Hamid Ally, Moonsiff of Sonamooke, dated 27th April 1848.

Mohun Chunder Singh, (Plaintiff),

versus

Bhowanee Barooee and others, (Defendants.)

SUIT to recover the amount due on a kurrarnamah, dated 8th Aughun 1248 B. S.; price rupees 166, interest rupees 111-2-15: total rupees 277-2-15.

Plaintiff states that Bhowany Puteet and Sartuck jointly borrowed from him rupees 300, by two deeds, and after settling their accounts the sum of rupees 166 was found to be due, and these three parties gave him a kurrarnamah, on the 8th Aughun 1248 B. S., for it, promising to repay the amount in the month of Phalagoon following, and pledging various property, real and personal: not having been paid, plaintiff sues Bhowany, and the heirs of the other two parties.

Bhowany replies by acknowledging the deed, and says that he has on various occasions paid plaintiff by rice, &c., but he will not give him credit for it: with his reply he filed a stamp receipt stated to have been given to him by plaintiff, dated the 11th Phalagoon 1249 B. S., professing to cover fifty-nine measures and five seers of rice and ten measures fourteen seers of goor. By a petition filed by this defendant on the 10th March 1848, he wished to correct his statement of the 14th of September 1847, by making the rice delivered to plaintiff to have been sixty-nine instead of fifty-nine measures, stating that it was a clerical error.

In his jowaub-ool-jowaub plaintiff repudiates the receipt, and urges that defendants came forward to settle the matter by a kistbundee after he had brought this action against them.

In the opinion of the moonsiff, plaintiff has satisfactorily proved the kurrarnamah and the circumstance of defendants having been anxious to settle the matter in dispute with him, and, although defendants have brought forward witnesses in support of their alleged payment, he cannot believe their testimony, because the alleged writer of the receipt, the son of plaintiff, has on oath solemnly denied it, and on making him write the receipt over in his (the moonsiff's) presence the writing was very different; further, the moonsiff thinks that so important a mistake as 59 for 69 would not have occurred and been left undetected for nearly six months: he consequently decrees the case in plaintiff's favor.

Bhowany and the heirs of one of the other defendants appeal; first, by urging that the son would not be likely to speak against his father; secondly, that the writer of the reply made the mistake; thirdly, that there is no foundation in plaintiff's statement that they (appellants) wished to settle the matter by a kistbundee, and plaintiff can produce as many witnesses as he pleases to prove this; and lastly, they beg that three remaining witnesses may be summoned, and an ameen be sent to enquire whether or not they (appellants) did deliver the rice and goor to plaintiff, and, if they have not done so, it is unaccountable that plaintiff should not have brought this action before, as their bond is dated in 1248 B. S.

JUDGMENT.

By the terms of the bond or agreement all payments are to be noted on the back of the bond; but this has not been done, although

the alleged payment was large: further, the stamp receipt looks extremely suspicious, the writing having been commenced with dark ink and all of a sudden changed to pale, evidently to give the document the appearance of age. Fully agreeing, therefore, with the moonsiff that plaintiff has established his case, and that defendants have not proved their receipt, I uphold the decree, and reject the appeal.

THE 4TH APRIL 1850.

Suit No. 217 of 1848.

Appeal from the decision of Moulvee Noorul Hussein, Moonsiff of Bishenpore, dated 9th March 1848.

Gopal Doss Mohunt, Talookdar of Lot Bansee, Plaintiff,

versus

Suhadeb Panjah and others, Defendants.

SUIT to recover balance of rent from 1251 to 1253 B. S.; principal rupees 10-4-10-2, interest 1-8-1: total rupees 11-12-11-2.

Plaintiff states that Suhadeb, Gunganarain, and Jugmohun hold lands in mouzah Heerapore appertaining to the above lot, with a jumma of rupees 31-12-11-2, and are in possession separately. From 1251 to 1253 B. S. two have paid up their revenue regularly, but Jugmohun fell in arrears:

In 1251 B. S.,	Rs.	1	3	10½
„ 1252 „	„	5	7	7½
„ 1253 „	„	3	9	11½

and this year's revenue less this balance was recovered under the distraint laws: he now sues for the whole.

Defendant Jugmohun replies, that the talookdar is a non-resident, his gomastah being his (defendant's) brother Gunganarain, one of the defendants, and this brother has united with Suhadeb, their father, the other defendant, and brought this action against him fraudulently; he urges that he has never received possession of his share of his property, and that fysalah No. 254 will prove it; he adds that, he has brought a suit for the reversal of the distraint proceedings against plaintiff, No. 15, and begs that the two cases may be decided together.

Gunganarain and Suhadeb, defendants, reply to the effect that, owing to disputes among themselves, all their property was divided into three equal shares. Jugmohun, defendant, is in possession of his one-third share separately, and they are jointly so, they refer to fysalah No. 254, agreeably to which Jugmohun's possession has been established.

The distraint suit, No. 15, was heard simultaneously with this by the lower court, and the moonsiff considers that plaintiff has satisfactorily proved the balance demanded to be due simply from the

share of Jugmohun, defendant, whose possession is fully established by fysicalah No. 254, and the three years' mofussil accounts which have been filed by plaintiff. He observes that at the request of defendants, explanations were called for from four respectable people who were named by defendants, but only two of them have replied, one of them knows nothing and the other writes ambiguously, hence he cannot believe Jugmohun defendant's statement; and as the balance has been fully proved to be due by him, he decrees it against him only.

Jugmohun, defendant, appeals, and the pith of it is that as no dakhil kharij has been made in the zemindar's serishtah of his share having been separated from the entire jumma of rupees 31-12-11-2, all three sharers are answerable and not appellant only; he urges that as his brother is plaintiff's surburakar he has colluded and brought this action through him; he argues that he is not in separate possession, and begs that an ameen may be deputed to enquire into the matter.

JUDGMENT.

Had this been a bond or other debt, the case would have been different, and all three of the sharers would have been responsible, but this is a matter of rent between a zemindar and his ryots. On examining the mofussil accounts for three years, I find the jumma is recorded in the name of the three defendants *jointly*, and no one has objected to this. Plaintiff states, that he has received his rent from two out of the three sharers, and the defaulter or defendant Jugmohun has never attempted to show that he has ever paid one pice due upon his recorded share, hence he must be held responsible for it; and plaintiff, as the zemindar, could not demand any further sum from appellant's (defendant's) co-sharers, as he admits he has already been paid. There is no doubt of a family feud among the defendants, but nothing has been proved against Gunganarain, the alleged surburakar, to bring him in guilty of collusion or trickery to serve himself against Jugmohun. I see no reason therefore for disturbing the decree, though I must remark that the moonsiff was wrong in calling for explanations from any body; and as I do not see that the suit which has been brought for the reversal of the distraint suit, is in any way connected with this, I have passed a separate decree regarding it. The decision of the lower court is hereby upheld, and the appeal rejected; plaintiff (respondent) having appeared without summons, must pay his own costs in appeal.

THE 4TH APRIL 1850.

Suit No. 218 of 1848.

Appeal from the decision of Moulvee Noorul Hossein, Moonsiff of Bishenpore, dated 9th May 1848.

Jugmohun Panjah, Plaintiff,

versus

Gopal Doss, Muhunt, and others, Defendants.

SUIT to obtain the reversal of a sale under Regulation V. 1812, laid at rupees 10-9-10-2.

Plaintiff states that his father and brother will not give him possession of his share in his ancestral property, and they have joined hand in hand, and making him, plaintiff, along with them, defaulters during the year 1253 B. S., have had this suit brought forward, and, making Juggurnath Ghose his under-ryot, has attached and sold the crops, &c., plaintiff therefore sues for the reversal of the distraint proceedings.

Gopal Doss replies, setting forth every thing as in his plaint in suit No. 217 just now decided, and adds that plaintiff is in possession, and Juggurnath is his ryot.

The moonsiff, without entering into the merits of the case, or deciding on the legality or otherwise of the distraint, refers to his decision in suit No. 256, or in appeal No. 217, and dismisses plaintiff's case.

In appeal, plaintiff relies on the grounds he has advanced in appeal No. 217.

JUDGMENT.

This suit and No. 217 are not in reality connected with each other: the moonsiff was bound to decide whether the distraint was legal or illegal, and not having entered into the matter, his decree is clearly incomplete. I therefore remand the case for trial *de novo*, and decree the appeal.

Value of stamp paper to be refunded.

THE 6TH APRIL 1850.

Suit No. 223 of 1848.

Appeal from the decision of Baboo Bissesshur Chuckerbutty, Moonsiff of Bancoorah, dated the 27th April 1848.

Sreemunt Kamar, (Plaintiff,) Appellant,

versus

Haradhun Kamar and Doorgamonee Bushtomee, Defendants.

SUIT to recover a bond debt of rupees 23, principal, and rupees 6-14-4 interest, altogether rupees 29-14-4.

Plaintiff states that defendant borrowed the above sum from him, executing a bond on the 7th of Maugh 1251, and promising to

repay him in Kartick 1253 B. S. : not having been paid, plaintiff sues for the amount with interest.

Doorgamonee Bustomee, defendant, in her reply, repudiates the bond and borrowing, and says that plaintiff has joined hand in hand with Haradhun defendant to ruin her for reasons assigned, but which need not be stated.

Haradhun did not appear.

The bond is signed by five attesting witnesses ; the alleged writer, Tarachand Sircar, denies having written it : Sreedhur, one of the witnesses, never saw the bond : neither party would have the deposition of Pershaud, another witness, taken ; and the remaining three witnesses are so contradictory and conflicting in their evidence that the moonsiff very properly disbelieves plaintiff's bond, and cannot credit his witnesses, and as a consequence he does not place any dependance upon plaintiff's khata accounts, on which the bond is said to have originated, and he dismisses the case.

In appeal, it is endeavoured to be shown by plaintiff that Tarachand and Sreedhur have perjured themselves and are bad people ; he urges that, as the bond was executed in the Pancoorah bazar, enquiries should have been made regarding it, and his khata accepted, &c.

Doorgamonee, respondent, appeared without notice.

JUDGMENT.

The moonsiff has very clearly pointed out in his decree the several discrepancies, which are apparent in the evidence of plaintiff's witnesses ; and I quite agree with him in condemning the bond, and declaring the case to be altogether false. The appeal is consequently rejected, and the decree of the lower court upheld ; respondent will pay her own costs in appeal, having appeared without notice.

THE 12TH APRIL 1850.

• Suit No. 227 of 1848.

Appeal from the decision of Moulvee Mazzoom Hussein, Moonsiff of Madhubgunge, dated 19th May 1848.

Oomachurn Paul, and others, heirs of Ramnarain Chowdhry, deceased, durputneedars of mehal Arazee, talook Assooralee, Plaintiffs,

versus

Muthoor Chootar and Mohun Chootar, Defendants.

SUIT for arrears of rent for the years 1252 and 1253 B. S., laid at rupees 15-1.

Plaintiffs state that defendants hold land in their estate, bearing a jumma of rupees 35-6, or Company's rupees 37-11-14-2, and as they are in arrear to the following extent they bring this action for it :

Due on account of 1252 B. S.	Rs.	7	11	14	2
Ditto	1253,.....	5	15	14	2
Interest,.....		1	5	11	0

Total... 15 1 0 0

Muthoor Chootar, defendant, replies by denying the jumma. He pleads that his deceased father held land by a pottah, dated 27th Chyte 1253 B. S., to the extent of beegahs $7-7\frac{1}{2}$, with a jumma of rupees 27, to this was added the jumma of Bindabun Chootar rupees 4, during the year 1232 B. S. They paid their revenue regularly, and deduction was afterwards made of two annas on account of Bhagbut Paul, and the jumma was fixed at rupees 30-14. He adds that he, Mohun Chootar, and Kheetee Bewah, were in possession, and divided their lands and jumma, and as Kheetee Bewah's possession can be proved by fysalah No. 70, she ought to have been sued equally with the other defendants. Defendant produces his dakhilas, which were given to him by the gomashtha during the lifetime of Ramnarain, the deceased durputneedar, and states that they can be proved, &c.

The moonsiff cannot believe the four years' mofussil accounts, which have been filed from 1250 to 1253 B. S., by plaintiff, and considers that they have been prepared for the occasion, nevertheless plaintiffs have proved their case by Gunganarain gomashtha and other witnesses, and as defendant has not established the genuineness of the dakhilas, or the pottah, although he has filed a copy of a fysalah No. 70, to show that Kheetee Bewah was one of the parties in possession, still he does not credit defendants' story, and decrees the case in plaintiffs' favor.

Defendants appeal, and properly so. •

JUDGMENT. •

This is a case of revenue, and can only be decided by the mofussil accounts, which the lower court has ruled are not trustworthy; further, the jumma in these accounts is only entered in the name of Muthoor Chootar, and plaintiffs have brought this action against Muthoor and Mohun: again, by referring to fysalah No. 70, it is clear that Musst. Kheetee Bewah was a party, also in possession and responsible jointly for the entire jumma, consequently it was incumbent on the lower court to dispose of, in the first instance, defendants' plea that the proper parties had not been sued. I see no reason for questioning the genuineness of the dakhilas which have been produced by defendants. Gunganarain's evidence is certainly not to be depended on, and, if plaintiffs cannot prove the accounts they have tendered to be genuine, the evidence of a dozen witnesses cannot, in my opinion, avail them or establish the fact of the balance being correctly due by defendants to them: at all events as defendants' plea has not been taken notice of by the lower court, I

am compelled to return the case to be tried *de novo*, and I can only further observe that if there had been any doubt in the matter a local enquiry should have been instituted. Ordered, therefore, that the appeal be decreed, and the case remanded for trial *de novo* with reference to the foregoing observations.

Value of stamp paper to be refunded in the usual way.

THE 12TH APRIL 1850.

Suit No. 231 of 1848.

Appeal from the decision of Moulvee Noorul Hussein, Moonsiff of Bishenpore, dated 10th May 1848.

Beelas Munee Dabya, (Plaintiff,)

versus.

Sreesteedhur Misser and Bungseedhur Misser, (Defendants.)

SUIT to recover maintenance allowance, laid at rupees 30 per annum.

Plaintiff states that her husband was one of three brothers, who lived together and possessed various property of the value of 800 or 900 rupees. Her husband died leaving her his heir without offspring, she sometimes lived with her parents and sometimes with her husband's brothers' families: she went on a pilgrimage and on her return came to the defendants' houses, and as she could not make it out with the other females and quarrelled with them she returned to her father's house. She has demanded her share or a maintenance allowance from defendants; but as they will not give either, she brings this action against them.

Sreesteedhur, defendant, replies that plaintiff will not come and live with him and his relations, that they have nothing to give, and as she will not do so, she cannot expect any thing.

In the opinion of the moonsiff, plaintiff is not barred from receiving her share because she lives with her parents, and though she has claimed maintenance allowance at the rate of rupees 2-8 per mensem, she is entitled to rupees 1-8, for reasons assigned by him: he consequently decrees at this rate.

Sreesteedhur, defendant, appeals. And as I consider the moonsiff should have called upon defendants for proofs to enable them to substantiate their case, that plaintiff should have established that an allowance for maintenance was denied her by defendants, that the property belonging to the three brothers was equal to the payment of the amount adjusted; that defendants were in possession thereof, and that plaintiff did not, of her own accord, leave defendants' house, which would altogether set aside her claim, I have no hesitation in recording my opinion that the case is incomplete. I therefore remand it for trial *de novo*, decreeing the appeal.

Value of stamp paper to be refunded in the usual way.

THE 12TH APRIL 1850.

Suit No. 236 of 1848.

Appeal from the decision of Moulvee Asudoollah, Moonsiff of Radhanagore, dated 31st May 1848.

Ramjeedoss, Plaintiff,

versus

Kishenpershaud Mundle and others, talooqdars of mouzah Nikoonjpoor, &c., appertaining to lot Bharah, Defendants.

SUIT for reversal of a distraint case under Regulation V. 1812, with possession on the old jumma of rupees 35-12 per annum, laid at rupees 29.

Plaintiff states that in mouzah Nikoonjpoor Hurreenuggur, &c., there are mal lands bearing a jumma of rupees 84-12, recorded in the name of Gopaldoss, also lakhiraj lands yielding rupees 14-12, besides other revenue calculable on the annual produce. He states that the said Gopaldoss sold to him, plaintiff, the said lands by a kuballa, dated 4th Chyete 1246 B. S., giving him possession; but there was no transfer of names effected in the zemindar's serishta. Plaintiff settled some portion of the above as well as other land he was in possession of with Gopaldoss and other ryots, the latter, not paying plaintiff, sued them and obtained decrees in his favor. Gopaldoss has connived with the talooqdar, dispossessed him, plaintiff, and receives the rent from the under-tenants. Defendants have ousted him and distrained the crops belonging to his malgoozarry land yielding a jumma of rupees 35-12, calling it Gopaldoss's land, and assessing it with rupees 95 per annum, &c.

Rampershaud talooqdar, defendant, replies by denying that plaintiff ever obtained possession, and urges he should have brought an action for it under his kuballa. Gopaldoss's name is entered as the ryot in his mofussil accounts; to him he must look for his rents, and if the land had passed over to the plaintiff, he ought to have had his name recorded in his office. Gopaldoss has leagued with plaintiff; and their object is to get the jumma fixed at rupees 35-12, instead of rupees 95, as at present, &c.

In his jowaub-ool-jowaub, plaintiff states that he applied to the talooqdar for a dakhil kharij, but it was refused until a nuzzur of 50 rupees might be paid.

The moonsiff argues that plaintiff, by his own showing, states that he is not in possession of the land specified in his kuballa, and that his name has not been registered in the zemindar's serishta; he ought therefore to bring an action on his kuballa, and until he does so he cannot go on with this suit: he dismisses the case, with costs.

Plaintiff appeals, but it is a repetition of his plaint, and nothing new has been advanced.

JUDGMENT.

The moonsiff is incorrect in stating that plaintiff, in his plaint, admits he is not in possession: I have referred to it, and do not find such to be the case. However, the decision is good; and as Gopal-doss' name is recorded as the ryot, defendant must naturally look to him for his rents, and attach the crops of the land yielding his jumma: he has no other alternative. If, however, plaintiff has purchased Gopal's title, he should sue for possession under his kuballa, and get his name registered in Gopal's stead in the zemindaree serishta. The decree of the lower court is, therefore, confirmed, and the appeal rejected.

THE 12TH APRIL 1850.

Suit No. 239 of 1848.

Appeal from the decision of Moulvee Asudoollah, Moonsiff of Radha-nagore, dated 16th May 1848.

Nuffur Ghosal, Plaintiff,

versus

The Maharance of Burdwan, on her demise, the Maharajah Dheeraj Buhadoor, Narain Singh, and others, zemindar of the jungle mehal, and others, Defendants.

SUIT to cancel an ekrarnamah, dated 30th Jyte 1254 B. S., which defendants by force compelled plaintiff to execute, laid at Sicca rupees 1, or Company's rupees 1-1-1 $\frac{1}{4}$.

Plaintiff states that he has been in possession for years past of 2 beegahs of rice land, belonging to the mowroosec dewuttur of Gopal Mundle (a nominal defendant) in mouzah Talookah, with a jumma of Sicca rupee 1: he has regularly paid his rent, and received his dakhilas. On the 30th Jyte 1254 B. S., the naib gomashta of the zemindar, or rajah, sent his nugdees, servants, seized and brought plaintiff to the zemindaree cutcherry at Bharah, and under the plea that the land at issue belonged to their jungle mehal, they demanded a kubooleut from him, which he, plaintiff, declined to give; whereupon the gomashta placed him under the charge of his servants, and at 9 o'clock at night they compelled him to sign the "ekrar kubooleut" for 2 beegahs, fixing the jumma at Sicca rupee 1 per annum. Plaintiff now sues that this ekrar may be set aside and cancelled.

The maharanee and, on her demise, the maharajah of Burdwan, reply by denying that the kubooleut was executed by force and against the will of plaintiff; he urges that the land in question appertains to his jungle mehal Ghat Bharah; plaintiff has all along been in possession and paid rent to him; he has now connived with Gopal Mundle, and fraudulently brought this action

plaintiff's father, Mooraroo Ghosal, deceased, obtained the land as a junglebooree parcel, and regularly paid his rent to the talooqdar for the time being, &c.

Gopal Chunder Mundle, defendant, replies in support of plaintiff.

The moonsiff is of opinion that, although the rajah defendant has brought two witnesses to prove that the ekrar kubooleut was tendered to his gomashta by plaintiff with his own free will, the reverse has been established satisfactorily by plaintiff. Defendants' witnesses are low caste men, do not reside in the village, and are dependants, &c., of the defendant, he consequently cannot credit their testimony: he considers that plaintiff has proved that the land in dispute belongs to the mouroosce dewuttur of Gopal Mundle, and he was never in occupancy of it as appertaining to the jungle mehal lands of Ghat Bharah: he called upon the defendant to show that plaintiff had ever paid him rent, and, having failed to do so, he decreed the case in plaintiff's favor, cancelling the ekrar kubooleut.

The maharajah of Burdwan appeals, but advances nothing new, unless it is that had any force been used by his servants, plaintiff would surely have gone to the foudaree court, and there is no regulation prohibiting the evidence of low caste men or dependants being as a matter of course rejected.

Respondent has appeared without notice.

JUDGMENT.

It is possible that the Burdwan family, defendant, may have lost various parcels of land belonging to their jungle mehal Ghat Bharah, by the adjoining talookdars and putneedars gradually and quietly encroaching upon them, as also by the collusion of their own servants; but it is a mistake to suppose they will be able to recover possession by force or intimidation, as in this and other instances which have come before me. Had defendant any right to the land at issue, he should have produced the counterpart of the original jungle booree pottah, which, it is alleged, was given to plaintiff's father, and he should at the same time have given proof of plaintiff having at any time, antecedent to 1254 B. S., paid revenue therefrom to him, defendant: he has altogether failed in this, and plaintiff having satisfactorily established his possession and his jumma, and that the kubooleut which was executed by him was so executed by force and against his will, I see no reason whatever for interfering with the decree of the lower court, and I thereby confirm it, rejecting the appeal.

THE 12TH APRIL 1850.

Suit No. 240 of 1848.

Appeal from the decision of Moulvee Noorul Hussein, Moonsiff of Bishenpore, dated 27th May 1848.

Buddinath Ghose, Plaintiff,

versus

Bankoo Beer, Defendant.

SUIT to recover a bond debt of rupees 25, principal, and rupees 25 interest, total rupees 50.

Plaintiff states defendants borrowed money from him on various occasions independent of the present transaction, when he was advanced rupees 25 on his bond, dated the 10th Phalgun 1244 B. S. Defendant promised to repay him in the month of Pous 1245 B. S., and not having done so, plaintiff brings this action.

Defendant replies, denying the bond, and says that plaintiff brought an action, No. 240, against him, whereupon an adjustment of his accounts was made, a kistbundee decree entered, and it was stipulated that there was nothing beyond the amount therein specified due from him to plaintiff.

The plaintiff produced his bond, and proved it by several witnesses, and fysicalah No. 240 was filed. Defendant was called upon to establish the fact that all outstanding debts had been entered in the kistbundee, and that this debt was included therein. He tendered the evidence of three witnesses; but as they contradicted each other materially, the moonsiff could not believe them; further, by referring to fysicalah No. 240, it appeared that though plaintiff did allude in his kubool-jowaub to every thing having been settled therein, still plaintiff, in his jowaub-ool-jowaub, repudiated it, and remarked that there were other transactions not adjusted, hence defendant's plea was unsupported, and he decreed the case in favor of plaintiff, with costs.

Defendant appeals, urging that suit No. 240 referred to transactions up to 1247 B. S., and as this action was connected with a bond of 1244 B. S., which must have been then current, plaintiff would certainly have included it in that suit, or have entered it in the kistbundee; he argues that his witnesses have not contradicted each other, and a mohajun would, on squaring an account, have included every thing outstanding in it.

JUDGMENT.

Suit No. 240 referred expressly to a rice transaction, and was brought for a definite sum, rupees 148, which was settled by plaintiff accepting a kistbundee for the amount adjusted to be paid at rupees 12 per annum during nine years from 1254 to 1262 B. S. Had therefore defendant intended that the kistbundee should include every thing, he should have replied to plaintiff when he repudiated his statement which was to that effect. Not having done so, and

plaintiff having proved his bond, there is no help for him but to pay it. I consider, therefore, that the decree of the lower court is correct, and I confirm it, rejecting the appeal.

THE 12TH APRIL 1850.

Suit No. 241 of 1848.

Appeal from the decision of Moulvee Noorul Hussein, Moonsiff of Bishenpore, dated 18th May 1848.

Roop Naig, Plaintiff,

versus

Nubboo Sirdar Sudyal, Mr. J. R. Watson, the Government, and others, Defendants.

SUIT for possession of a tank, value of fish, &c., laid at rupees 15-4.

Plaintiff states that Mr. Watson, talooqdar, gave his father a pottah, dated 3rd Aughun 1250 B. S., for a tank, its produce, repairs, &c., at a jumma of 12 annas per annum. The tank was called Taul Pookur, and is situated in mouzah Bankadoh, appertaining to lot Kooroorah. Mr. Watson also allowed him eight out of the twelve annas rent for 1250 B. S., for repairs, excavating it, &c. Plaintiff's father, it is alleged, cleaned and dug out the tank, filling it with fish, and up to 1251 he was in undisturbed possession. On the 15th of Jyte 1252 B. S., defendants, other than Mr. Watson and Government, dispossessed plaintiff, Nubboo Sirdar claiming the tank as his own ghatwally chakeran property. He, therefore, sues for his jumyee rights as acquired by his pottah, valuing them at 10 rupees, and the fish rupees 5-4, altogether rupees 15-4.

Government, defendants, reply, that they have done nothing directly or indirectly, and are in no way concerned.

Nubboo Sudyal and Adhat Naig, defendants, reply, that the tank has been undervalued, it should be 100 and not 10 rupees, and various parties have been made defendants to prevent their being summoned as witnesses; they refer to the precedent of the Sudder Dewanny Adawlut of the 11th August 1847, and urge that Mr. Watson has fraudulently been kept in the back ground. They plead that the tank is their mouroosee ghatwally chakeran, and that the talooqdar was never in possession. The talooqdar of Bankadoh has brought an action, No. 71, for possession of all the chakeran lands, claiming them as his towfeer, and the case is pending before the principal sudder ameen, so that the institution of this suit clearly shows that plaintiff is in league with the talooqdar. They maintain they are in possession of the tank, fishery, &c.

Mr. Watson and the other defendants have not appeared, and, on plaintiff being called upon to produce his pottah, he replied that it was lost, but he produced the dakhilas of two years. Defendants,

on being interrogated as to whether the tank was included in their "isumnueesy," or register, replied they could not say without enquiring into the matter, nor could they state whether ghatwals had received tanks as well as land in lieu of salary, for the performance of their police duties. However, without giving defendants time to produce these proofs, the moonsiff proceeded on the same day to decide the case, and his decree is unintelligible and useless. He considers that 10 rupees has been correctly estimated as the value of the tank, and he cannot credit defendants' statement: he observes that ghatwals receive land, not tanks, for their chakeran, and it is not likely that they would have fed the tank with fish as they have no right thereto; further, they did not produce a copy of their isumnueesy, which they could have done had the tank been included therein; and although plaintiff could not produce his pottah, he considered that he had proved the plundering of the fish, and, as he was entitled to the value thereof, he decreed it as well as possession "for the present" in his favor, adding that this decree was not to be of any avail to plaintiff, as regards his pottah, or in regard to his possession, and Government costs were to be paid by plaintiff, as Government had been unnecessarily made a defendant, &c.

The ghatwals, defendants, appeal.

JUDGMENT.

The date of the alleged plundering of the fish is the 15th of Jyete 1252 B. S., and this suit was instituted two years and eight months after, whilst the talookdar's case against all the chakeran ghatwals is pending in the principal sudder ameen's court. Plaintiff cannot produce his pottah by which he claims possession. Defendants deny that he ever held it, and still no local enquiry is instituted to prove who was and is in occupancy. To decree a case in the face of so much being *prima facie* against plaintiff is extraordinary, and the more so when I refer to the decree itself, and find that possession is only ordered to be given to plaintiff "for the present," and that the decree is, in fact, to be of no benefit to the plaintiff, at least I cannot understand the meaning of the lower court to be otherwise. In the absence of the pottah, absolute possession should be proved by plaintiff, and a local enquiry corroborative thereof held. I have no alternative therefore but to remand the case for trial *de novo*. I consequently decree the appeal, and remand the case to the moonsiff.

Value of stamp paper to be refunded in the usual way.

THE 13TH APRIL 1850.

Suit No. 249 of 1848.

Appeal from the decision of Moulvee Asudoollah, Moonsiff of Radhanagore, dated 31st May 1848.

Ramjeedoss, putneedar of lot Belliah, Plaintiff,

versus

Bhairub Sirmah, Defendant.

Hurreepershaud Mundle, durputneedar of lot Goomoot, Ramgopal Barick and others, farmers of lot Mookoondpore, Claimants, Objectors.

SUIT for balance of revenue for the years 1252 to 1254 B. S. inclusive, principal rupees 4-11-8, interest rupees 6; total rupees 5-1-8.

Plaintiff states defendant is a "mouroosee" ryot, and gave him a kubooleut on 2nd Bhadoon 1253 B. S.; for the cultivation of 1 beegah and 18 cottahs of resumed chakeran land in mouzah Narcheh, which has been incorporated in lot Belliah, the jumma was Sicca rupees 2. During the year 1252 B. S. defendant paid rupees 1-12 only, and in the two following years he paid nothing: plaintiff consequently sues for the amount.

Defendant replies that there is no resumed chakeran land of Narcheh in lot Belliah, and he can prove it by referring to the chakeran list and byenamah, which plaintiff should be called upon to produce. He denies having given a kubooleut, and says there was no necessity for it, as plaintiff admits he, defendant, is a mouroosee ryot. Plaintiff has not specified his boundaries, and he, defendant, is in ryotee possession of land in mouzah Narcheh, a khalsa mehal of lot Goomoot, as well as in lot Arazee Mookoondpore, but has nothing to say to lot Belliah.

Hurreepershaud Mundle, one of the objectors, urges that he is the durputneedar of Goomoot, the lands at issue belong to him, and no lands called "Narcheh chakeran bazyaftee" are to be found in lot Belliah.

Ramgopal Barick, another objector, lays claim to the lands, and urges that the previous objector has no title to them.

The plaintiff, having proved the kubooleut and the balance, and his gomashta having filed the jumma-wasil-bakee accounts of the year 1228 and from 1249 to 1253 B. S., showing that defendant was his mouroosee ryot, the moonsiff does not consider it to be necessary to call for his byenamah, as requested by defendant, or to enter into the claims of the objectors as the case is one of revenue: he therefore decrees in plaintiff's favor, and adds that the decree is not to affect Hurreepershaud Mundle's "hukecutt."

Defendant appeals, relying on his reply, and adds that Ramgopal Barick, one of the objectors, is plaintiff's dependant.

JUDGMENT.

*Be the case what it may, every person has a right to a hearing, and as I find neither defendant nor the objectors had an opportunity of substantiating their case or of tendering proofs in support of it, the decree is of itself incomplete, while the final conditional order is altogether irregular. Whether Ramgopal Barick is or is not a dependant of plaintiff, some decision regarding his claim was required; and as the whole case hinged upon the byenamah, I am of opinion that the lower court should have required its production, especially as defendants strongly protested against having given any kuboolent to the plaintiff, and the necessity for his so doing was by no means apparent. From the byenamah and chakeran list it would at once appear whether or not plaintiff did possess any resumed chakeran land in mouzah Narcheh appertaining to lot Belliah; and if there should be no mention of it in these two documents, which plaintiff seems averse to file, his case would be *prima facie* bad. Ordered, therefore, that the appeal be decreed, and the case be remanded for trial *de novo*.*

Value of stamp paper to be refunded in the usual way.

THE 13TH APRIL 1850.

Suit No. 250 of 1848.

THIS case and the preceding are precisely alike, the appellant being Hurreepershaud Mundle, one of the objectors; and as I have remanded the case for trial *de novo*, no further orders are required. The appeal is decreed, and value of stamp paper to be refunded.

THE 13TH APRIL 1850.

Suit No. 251 of 1848.

Appeal from the decision of Moulvee Asudoollah, Moonsiff of Radhanagore, dated 31st May 1848.

Ramjeedoss, Plaintiff,

versus

Khetternohun Chowdry and others, Defendants.

THE same claimants as in the two preceding appeals, Nos. 249 and 250.

Suit for balance of revenue for the years 1252 to 1254 B. S., principal rupees 1-12, interest 4 annas; total, Sicca rupees 2, or Company's rupees 2-2-2, due from 1 beegah of land.

The plaint and reply are similar to those in suit No. 249, but defendants filed a second petition, saying their jumma was 8 annas, that they had paid their rents, and that their reply was given in at the instigation of others and was false.

The moonsiff does not admit defendants' statement that the revenue due has been paid up, because they have stated one thing at one time and another at another: and referring to his other decision (*vide* appeals Nos. 249 and 250,) he decrees the case in plaintiff's favor.

The claimants appeal, and the plaintiff and defendants have evidently connived against him.

JUDGMENT.

The moonsiff should have gone into the claim of the appellants, and this was the more necessary when he must have seen that plaintiff and defendants were leagued against them. I consider the byenamah and chakeran list should have been demanded from plaintiff; and as the proceedings are incomplete, I remand, with reference to my separate decision of this date in the appeals above referred to, this case to be tried *de novo*.

The appeal is decreed, and value of stamp paper to be refunded in the usual way.

THE 16TH APRIL 1850.

Suit No. 146 of 1848.

Appeal from the decision of Moulvee Asudoollah, Moonsiff of Radhanagore, dated 16th March 1848.

Jugmohun Chuckerbutty, Mokoondnarain Chuckerbutty, and Durponarain Chuckerbutty, Plaintiffs,

versus

Bhyrub Gonee, decreedar, Kaloo Gungoolee, purchaser, Mohun Dunpat, debtor, and on his decease, his heirs, Rajee Bewah and others, Mohendronarain Chuckerbutty, surety of the debtor, and others, Defendants.

SUIT for the reversal of a sale in execution of a decree, laid at Company's rupees 182-6-8.

Plaintiffs state that Bhyrub Gonee, decreedar, defendant, took out execution of a decree No. 600 against defendants Mohun Dunpat, and Mohendronarain, his surety, and attached two parcels of land, one in mouzah Jeykissenpore, beegahs 1-19, the jote of Kashenat Seet, and the other in mouzah Pykepara, 12 cottahs, the jote of Juggurnath Pal, altogether beegahs 2-11, calling it the burmottur of the surety defendant, situated in mouzah Pykepara, and giving it an area of beegahs 2-14. Plaintiffs lay claim to the said land as a portion of their released mouroosee deottur, urge that they obtained it in part of their share, and that the decreedar purchased it "furzee" in the name of his relation Kaloo Gangoolee. They state that this land belongs to the Thacoor only and is deottur, that Durponarain, one of the plaintiffs, is always going about on pilgrim-

ages, while the two other plaintiffs carry on the poojah ceremonies and are in possession. *These two sued, No. 96, these defendants, and obtained a decree confirming their deottur, by the sudder ameen on the 3rd of February 1842.* On appeal, No. 44, they were however nonsuited. They then filed a fresh action, No. 167, in the Radhanagore moonsiff's court, but it was dismissed. On appeal, however, the principal sudder ameen, on the 26th January 1846, nonsuited them, because Durponarain, the absent plaintiff, was not a party. They now jointly bring this action.

Kaloo Gangoolee, defendant, replies that this suit cannot stand. Plaintiffs, in suit No. 167, stated that all their burmottur and deottur land had been divided, and they were in possession accordingly, while now they urge that they are only in possession of the produce, the land in dispute being in possession of all the sharers,—consequently they must all sue together. Again, he urges that he once took out execution of a decree, No. 78, against Prawn Kishen Chuckerbutty, and attached this and other property, whereupon Mohendronarain and six others laid claim to it under a roobakaree of the resumption authorities, but now only three out of the seven claimants are plaintiffs. The land in dispute is not plaintiff's deottur: Jugmohun, one of the plaintiffs, in a suit No. 695, laid claim to it, No. 126, as his burmottur. In execution of a decree, No. 78, it was claimed, No. 97, as deottur. In the suit No. 97, in the sudder ameen's court, it was stated that the land in dispute had been measured by the resumption authorities, and that the chittahs were at Hooghly or in Calcutta, whereas in suit No. 167, in the moonsiff's court it is made out that it has never been measured. In the year 1209 B. S. plaintiff's ancestors filed three taidads at one time, in which their lakhiraj was described as burmottur and the parcel in dispute is included therein; but these taidads were contested under Regulation II. 1819, and plaintiffs replied in suit No. 213, to the effect that the land was deottur. Plaintiffs have stated falsely, as regards the shares, the land belonged to Mohendronarain, surety of Mohun Dunpat, and had it belonged to them, plaintiffs, they would have filed their claim within the 30 days' ishtehar. The parties live together. Mo-koondnarain, one of the plaintiffs, bought two lots at the sale on the same day that he, defendant, did, and Jugmohun was also present. In suit No. 92, plaintiffs have declared that no division of the shares was made, and this is proved by case No. 167. Defendant urges that he bought two lots, one No. 12, the jote of Donye Metia, containing 18 cottahs, the other No. 13, the jote of Gobind Puramanik, of 12 cottahs, and though plaintiffs may assert that the lands are their deottur, it can be proved that they pertain to Pykepara and not to Jyekishenpore. Mohendronarain defendant's lakhiraj is in two parcels, and he, defendant, purchased them as well as his jumyee lands, and obtained possession, &c. &c.

Bhyrub Gonee, defendant, replies in support of Kaloo Gangoolee, defendant, and in addition states that on a former occasion the share of another party descended from the same ancestor was sold as burmottur. None of the other defendants appeared.

Although plaintiffs have produced various fysalahs, roobakarees, &c., and tendered copies of the evidence which was taken in appeal No. 24, and brought forward witnesses in support of their case, the moonsiff does not consider plaintiffs have established it. They state in their plaint that the land at issue was attached and sold without their knowledge; but by the record and a copy of the lot-bundee it is evident that Jugmohun and Mookoondnarain, plaintiffs, were both not only present at the sale, but that Mookoondnarain bought two lots at it; hence, if plaintiffs had possessed any rights, they would have brought them forward before the conclusion of the sale, hence the sale is valid. Again, plaintiffs claim the land as deottur and their share in the produce, but deottur land and produce are appropriated to the debsheba, and cannot be divided in the way stated; or had there been a division, a hissanamah would have been filed, or even plaintiffs would have proved their deottur title. Further, on a review of the case, it is clear that plaintiffs at one time say one thing, at another they state something else; and as the moonsiff cannot believe their statement or case, he dismisses it, with costs.

In appeal by plaintiffs, a few quibbles have been introduced: they urge that they have not stated they were ignorant of the sale, only of the attachment; that though they may have been present and did not petition, still their deottur right has not been affected; and had they petitioned the sale ameen, nothing could have been done. The land in dispute was pending enquiry before the resumption authorities and has been since released; and as it is deottur, it cannot be sold under Construction No. 1166. They urge, secondly, that it is customary to divide and distribute the produce and ceremonials; and though no tukseemnamah was filed, there was a species of one in suit No. 167, which could have been referred to. Thirdly, they deny that they state things at variance with each other, and observe that the point at issue, whether the land is their deottur or otherwise, has not been gone into, although they, appellants, filed several documents in support thereof, &c.

JUDGMENT.

I consider the decision of the lower court in every way to be correct. The usual notice for the sale was issued, and plaintiffs should have preferred their claim in due course: to say they were ignorant of the attachment and not of the sale, is absurd; all the parties live together, and as some of them were acquainted with the attachment and eventual sale, when one of the plaintiffs was the purchaser of one portion of the attached property, they doubtless knew all about

the remainder. Whether any lakhiraj title was or was not under enquiry before the resumption courts, cannot affect defendants. Plaintiffs were bound to prove, in the first place, that the disputed land was their deottur, and, secondly, that it was included within the boundaries of the said dewuttur; but they neither prove it to be dewuttur, nor produce any chittas of measurement to support their title: on the contrary their title, if any, is clearly burmottur, as is proved by the copies of the taidads. Granting even that the land was their lakhiraj, not liable to sale, still it would be necessary to show that there had been a general division of their shares among the several shareholders, but plaintiffs have altogether failed to establish this, and, as there is nothing advanced which can lead me to differ in opinion with the lower court, I uphold the decree, and reject the appeal.

THE 17TH APRIL 1850.

Suit No. 15 of 1849.

Appeal from the decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated 10th May 1849.

Luggun Koomaree, Pauper, Plaintiff,

versus

Ranee Chundrabully Koomaree, Defendant.

SUIT to recover her 8 annas share in four mokurruree mehals, with wassilat from 1245 to 1252 B. S., laid at rupees 3,617-12-5-3.

Plaintiff states that her deceased husband, Damoodur Dhull, left two widows, plaintiff and defendant, she having been the first wife. Defendant took measures to recover their mokurruree rights in four mouzahs, Ramnuggur, &c., and eventually, on a special appeal, obtained a decree upholding them. See Decisions of the Sudder Dewanny Adawlut, pages 268 to 271, cases Nos. 168 and 169 of 1844. Defendant was put in possession, and, as she will not give her, plaintiff, her share, she brings this action for it.

Defendant replies that she *solely* obtained the decree, and received possession, plaintiff has no right; and as the order of the principal sudder ameen added to his decree of the 24th of June 1842, whereby it was declared that plaintiff's rights and interests were not to be affected by his decree, is not referred to in the special appeal decree of the Sudder, that portion of the decree must necessarily be considered to be reversed.

In her jowaub-ool-jowaub plaintiff states that, according to the shasters, she is entitled to her share of her deceased husband's property, and defendant cannot deprive her of it in virtue of the above decree. The two widows are the joint heirs, and she prays that a bywusta may be called for.

The principal sudder ameen is of opinion that plaintiff cannot be deprived of her rights and interests in the four mokurruree estates

referred to; and as in the special decree appeal there is no order reversing that portion, which confirmed them, it cannot be argued that it was reversed, as pleaded by defendant; and as by the pundit's bywusta it is declared that defendant, in consideration of the trouble and expense she had been put to in redeeming the property, was entitled to four out of the 16 annas share, and that plaintiff and defendant as joint heirs of their deceased husband were entitled to the remaining 12 annas, half and half, and he agreed thereto, he consequently decreed possession to plaintiff of a 6 annas share in the four mouzahs for her life without power of transferring it to any one. He rejected plaintiff's claim to wassilat prior to the institution of this suit, but allowed her mesne profits agreeably to Circular Order, dated 11th January 1849, subsequent thereto, with interest.

Defendant appeals against that part of the decree, granting plaintiff a 6 annas share, but neither plaintiff nor defendant appeal against any thing else.

In appeal, it is urged that there was no occasion for a bywusta, that she, defendant, had expended large sums of money in redeeming the property, being obliged eventually to carry it through as pauper, and that she is solely and entirely by the special appeal decree entitled to the whole of the four mouzahs, &c.

Plaintiff, respondent, appeared without summons.

JUDGMENT.

I cannot perceive how the special appeal decrees, in suits Nos. 168 and 169, referred to above, can be construed to annul that portion of the order of the former principal sudder ameen, dated the 24th June 1842, whereby it was declared that plaintiff's rights and interests were not to be affected by the decree. This order originated in plaintiff in this case having given in a petition to the court on the subject of her rights. The Sudder Court reversed the decision of the judge, which had reversed that of the principal sudder ameen, and decreed for the appellant or defendant in this case. It was silent as regards the order now under discussion, although it amended another portion of the decree, which referred to the realization of the mesne profits. Under any circumstances, I maintain that plaintiff, as one of the joint heirs of her deceased husband, is fully entitled to her share according to the bywusta, which has been given by the pundit in these four mokurruree mouzahs; and though the other widow may have gone to a heavy expense in prosecuting for these rights and that too successfully, plaintiff has not done any thing directly or indirectly whereby she has forfeited her lien to her share. I consider, therefore, that the decree of the principal sudder ameen is correct, and I hereby confirm it, rejecting the appeal. Costs to fall upon appellant, and respondent to pay her own in appeal.

THE 17TH APRIL 1850.

Suit No. 253 of 1848.

Appeal from the decision of Moulvee Abdool Uzeez, Moonsiff of Oundah, dated 25th May 1848.

Kishen Dhun Chowdhry, Plaintiff,

versus

Ramtunnoo Chowdhry, (Defendant,) Appellant.

SUIT to recover a debt of rupees 16, less 8 annas, *plus* interest; altogether rupees 15-10-10.

Plaintiff states that defendant, his uncle, on the 2nd of Maugh 1245 B. S. borrowed from him rupees 16, for the wedding expenses of his daughter, promising to repay it on receiving his fees; but he never paid it, and plaintiff having deducted 8 annas, which are due by him to defendant, he brings this action for the remainder.

Defendant never appeared, and the case proceeded *ex parte*.

Plaintiff having proved the borrowing by two witnesses, and the serving of the notice on defendant by three witnesses, the moonsiff decreed against defendant for the full amount claimed, with costs.

Defendant appeals, and says he never was served with notice, and having heard of the decree being given against him, he has now come forward; he urges that it is all false and can prove it.

JUDGMENT.

Without going further into the case, I find that the serving of the notice and ishtehar on defendant has not been proved; on the contrary, the evidence of witnesses, who live in defendant's mouzah, has not been taken, and the witnesses who do appear, are found to reside in mouzah Adkurra, whereas defendant lives at mouzah Changoolliah: this is irregular. And *after* proof had been taken in support of plaintiff's case, the moonsiff proceeded to prove that the ishtehar had been properly issued: this too is contrary to regulations, I consequently have no hesitation in decreeing the appeal. Ordered, therefore, that the appeal be decreed, and the case remanded for trial *de novo* to the lower court.

Value of stamp paper to be refunded in the usual way.

THE 18TH APRIL 1850.

Suit No. 4 of 1849.

Appeal from the decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated 6th March 1849.

Guddadhur Banerjea, talookdar of the putnee lot Kumulpore
Kishenshayer, (Plaintiff,) Appellant,

versus

Moorooledhur Biswas, Kishen Barooee, Muggun Barooce, and Rug-
hoonath Jushee, the heir of Gopalchunder Jushee, (Defendants,) Respondents.

SUIT for possession of 45 beegahs of land in mouzah Byekunt-poor, appertaining to the above lot after settlement of lakhiraj claims; for the revenue of the first six months of 1251 B. S., rupees 7-5-7-2, and for the year 1252 B. S., at rupees 14-10-15, *plus* interest, together laid at rupees 289-1-2-2, or eighteen times value.

Plaintiff states that he was the purchaser, at the first six months' putnee sales in 1251 B. S., of the abovementioned lot, and obtained possession. Previous to his occupancy there was a mouzah called Byekuntpoor, which always paid revenue to the former talookdars; and on his, plaintiff's, becoming the purchaser of the lot, he sent for the ryots in order that they might enter into engagements with him. Moorooledhur Biswas, one of the defendants, received a pottah, and tendered a kubooleut on the 29th of Pous 1251 B. S., for the Byekuntpoor lands at a jumma of rupees 9 per annum. Subsequently he declared that the kubooleut had been executed by force and against his will, and having brought an action in the Oundah moon-siff's court against him, plaintiff, the ryot Moorooledhur, defendant, obtained a decree, and the kubooleut was cancelled. Mouzah Byekuntpoor, plaintiff states, is his mal village, and defendant Moorooledhur, who, claims it as his lakhiraj, has no right to it: he consequently sues for possession and rent.

In a supplemental plaint, filed on the 3rd of August 1847, plaintiff states that Byekuntpoor and Khord Byekuntpoor are both entered in his byenamah, that the land in dispute pertains to Khord Byekuntpoor, but the word "khord" was inadvertently omitted in his original plaint, and only Byekuntpoor was written.

Moorooledhur Biswas, in his reply, filed in the collector's office, (the case having been sent there for enquiry and report under Regulation II. 1819,) states that mouzah Byekuntpoor was the mou-roosce lakhiraj burmutter of Anundloll Gooroojee, and he was in possession previously to the Hon'ble Company's accession to the Dewanny. The Gooroojee gave him a mokurruree pottah for it at a jumma of rupees 13-12, and afterwards he willed it away to Gopal Jushee, one of the defendants, who again gave him, Moorooledhur, 9 annas of it on a mokurruree jumma of rupees 8, the remaining 7 annas being retained as julsasun. Defendant says he is in

possession according to Gopal Jushee's pottah, and has no concern with plaintiff's lot Kumulpoor: he adds that plaintiff bought this putnee lot in his nephew's name by kuballa, and to enable him to break up the old settlement he caused the lot to be sold, when he bought it for himself. The mouzah Bhogwanpoor Byekuntpoor, which is written as one mouzah in the byenamah, was given out in durputnee by the former talookdar to Rampershaud Mozoomdar, and on his death it was given on a lease to Gunganarain Mozoomdar on an enhanced jumma, with an alteration in the title of the lease, and he is in possession and pays his revenue. The disputed land and his, defendant's, Byekuntpoor are two and a half coss apart, are perfectly distinct, and is not connected with the former talookdar's shoomaree papers of 1230 B. S. Plaintiff has mixed up, and confounded the boundaries, &c.

In a supplemental reply, defendant urges that the Byekuntpoor appertaining to plaintiff's talook—is already in his, plaintiff's, possession, and no collections have been ever made from the disputed Byekuntpoor by the former talookdars. The addition of the word "khord" is entirely an after thought, the disputed land is lakhiraj, and the uncovenanted deputy collector has sent a proceeding on the subject to the collector.

Muggun Barrooe and Kishen Barrooe, defendants, support Mooroleedhur defendant, stating, in addition, that plaintiff has confounded the boundaries, and that on the west side of Byekuntpoor, close to Jamtarah, is their mouroosee jummye land in mouzah Moorakattah.

Gopal Jushee, defendant, supports Mooroleedhur, defendant, and adds, there is but one Byekuntpoor, and that is in the possession of Gunganarain; the other or Khord Byekuntpoor is entered in the byenamah, but the land at issue is not plaintiff's Khord Byekuntpoor. Plaintiff not having sued his, defendant's, uncle, he, defendant, is unable to produce the original and real documents in proof of his case.

In his first jowaub-ool-jowaub, filed on the 13th of September 1846, plaintiff, repudiates defendant's lakhiraj title, and, if it were correct, he adds, that his taidads would have been produced. Byekuntpoor and Bhogwanpoor are two mouzahs in the possession of Gunganarain, and besides them he has a right to the land in dispute as his in virtue of his byenamah. Byekuntpoor is a "bechoppur" mouzah, and though it may not be entered in the shoomaree papers, his right to it cannot be forfeited.

In his second jowaub-ool-jowaub, filed on the 29th of March 1847, plaintiff explains the boundaries and replies to Muggun and Kishen, defendants.

In his third jowaub-ool-jowaub, filed on the 13th May 1847, he urges that there is no lakhiraj, and that defendants are not in possession as such, that there are two mouzahs called Byekuntpoor in

his byenamah, one is Khord and the other Byekuntpoor only, and Gunganarain's land pertains to Khord or Chootoo Byekuntpoor.

The suit proceeded. The deputy collector replied that mouzah Byekuntpoor was a "najaiz," invalid lakhiraj. The Qundah ameen was deputed on the 1st September 1847, to institute enquiries, and filed his papers on the 3rd April 1848. The original decennial settlement papers were called for, and after examination copies of two years' accounts of 1197 and 1202 B.S., were kept. The Burdwan Rajah was called upon to explain whether the disputed land had been included in his settlement with Government, to which he replied that Khord Byekuntpoor and Byekuntpoor had been settled with the former zemindar, but tendered no proofs. Plaintiff was called upon to show that he had ever received rents from the land at issue, which he failed to do. Various documents were filed on both sides, a further reference was made to the deputy collector to enquire whether Government had claim to defendant's lakhiraj mouzah Byekuntpoor, which was replied to on the 9th of September 1848, and, after carefully going through the case, the principal sudder ameen recorded his opinion. He observes that plaintiff, in his plaint, sued for possession of Byekuntpoor, stating, in his third jowaub-oool-jowaub, dated 13th May 1847, that *khord* Byekuntpoor was settled with Gunganarain Mojoondar; but in his supplemental plaint, filed on the 3rd of August 1847, he wished his original plaint to be corrected, and the mouzah to be written *khord* Byekuntpoor instead of Byekuntpoor only: this he considered very extraordinary, as plaintiff wished his plaint to be corrected in direct opposition to what he had stated, in regard to *khord* or *chootoo* Byekuntpoor having been already settled with Gunganarain, and the court could not accept it. Secondly, by a copy of a roobukaree, dated the 30th of August 1847, it appeared that Gopal Jushee's invalid lakhiraj tenure called Byekuntpoor, in the possession of Moorooledhur Biswas, had been measured in case No. 18, yielding an area of beegahs 129-14-5-2; that this was done at the instigation of one Muddoosoodhun Chuckerbutty, malik of Muddunmohunpoor; an opinion had been submitted to try the validity of the tenure, but nobody had ever laid claim to it as *khord* Byekuntpoor. Thirdly, plaintiff having admitted, in his third jowaub-oool-jowaub, that Gunganarain was in possession of *khord* Byekuntpoor, the court called for the quinquennial papers of 1202 B. S.; but there is no mention in them of *khord* Byekuntpoor, and the court cannot believe the Rajah of Burdwan's statement that the word "khord" must have been inadvertently omitted, nor can it now be rectified, especially as by the *fysalah* of the sudder ameen of zillah jungle mehals, dated the 28th May 1831, No. 1605, filed by defendant, it is clear that even then the land in dispute was *only* called Byekuntpoor. The plaintiff's claim therefore for possession of the disputed land as *khord* Byekuntpoor, through the medium of a corrected supplemental plaint, is opposed to the quinquennial

papers of 1202 B. S., the recorded decree of the court, and the local investigations of the revenue authorities, and he cannot believe it or the ameen's report in favor of plaintiff's right to the land as Khord Byekuntpoor, (against whom too petitions have been presented,) he consequently dismisses plaintiff's case, with costs.

Plaintiff appeals, urging that his case should not have been dismissed, as he has proved that Khord Byekuntpoor was included in the original decennial settlement; secondly, that lot Kumulpoor turuf Lodnah, pergunnah Bishenpoor, appertaining to hoodda Moorakutta belongs to the same zemindar, and in the byenamah of putnee Kumulpoor the zemindar settled two mouzahs by name Byekuntpoor, including thereby Byekuntpoor and Khord Byekuntpoor, and he has not confounded the boundaries in his plaint. Again, Mooroolcedhur Biswas, defendant, did not deny that mouzah Byekuntpoor was settled by him with Gunganarain. His, plaintiff's, jowaub-ool-jowaub, dated the 13th of May 1847, is correct, and the words "noloy" were omitted after the name of Gunganarain, by adding which there would be no mistake, and this omission too is clear by looking at the latter part of the jowaub-ool-jowaub, and further the plaint was corrected by the order of the court; thirdly, the fysicalah of 1831, No. 1605, and the deputy collector's proceedings, cannot affect him, appellant, and no enquiries were made relative to the mouzah being mal or lakhiraj, and it was measured after this suit had been instituted; fourthly, Government have not yet claimed the 129 beegahs; the case No. 81 is only miscellaneous one, and orders have been only issued to enquire whether the disputed mouzah was or was not included in the decennial settlement, and if it should be proved that it was included then there would be no demand on the part of Government; fifthly, defendants have not filed any proofs in support of their lakhiraj title; sixthly, the ameen, who was deputed by the court, has reported that the disputed mouzah is his mal mouzah, and the papers and documents filed by him, appellant, amply show that collections were made therefrom during the period of the former talookdars; seventhly, the Rajah of Burdwan has replied that Byekuntpoor and Khord Byekuntpoor were both included in the decennial settlement, and both pertain to lot Kumulpoor, and though the word "khord" was omitted in the papers of 1202 B. S., still it is written in previous years' papers; and finally, all lands and mouzahs, which are so entered in the zemindar's permanent settlement, be they more or less than 100 beegahs, cannot be interfered with by Government, and though the ameen's report was objected to by defendants, no opinion quashing it has been recorded by the court.

The appeal was admitted by my predecessor on the 18th April 1849, and on the same date copies of various documents and accounts were filed by appellant, to show that the previous talookdars held possession and realized revenue from the disputed land.

Mooroolleedhur Biswas, defendant, respondent, replies that it was not necessary to decide whether the disputed land was lakhiraj or not. Plaintiff was bound to prove that it was his mal, and that he had received rents therefrom, which he was unable to do either in the Oundah moonsiff's court, or before the principal sudder ameen. His further proofs ought not now to be received, and he relies on the several documents he has filed, &c.

The case was argued on the 15th instant, and resumed this day, when copies of various documents filed by appellant were inspected, and among them a copy of a fysicalah of the Sudder Dewanny Adawlut, dated the 26th January 1846, (as a precedent,) connected with case No. 23 of 1845, Gosain Doss *versus* Golaum Muhecooddeen and another.

JUDGMENT.

Taking into consideration the errors of omission and commission, which are apparent on the part of plaintiff, it is extremely difficult to say whether he claims the disputed land as Byekuntpoor or Khord Byekuntpoor. By looking at the byenamah, I find one Byekuntpoor bracketted with four other mouzahs appertaining to nij turruf, including Gungadhurpore and others; again, underneath and quite distinct are several "tuffahushee" mouzahs, and among them one called "khord" Byekuntpoor, nij turruf Lukkunpoor and others, both appertaining to lot Kumulpoor. Had plaintiff's case been straightforward, he could and should have filed his plaint, clearly stating to which of the Byekuntpoors he laid claim, and afterwards had there been any clerical error, the omission might easily have been rectified as the Khord Byekuntpoor mouzah is quite a distinct class of mouzahs from the other Byekuntpoor. A reference to the roobakarees of the principal sudder ameen, dated the 1st and 14th of September 1847, shows that the omission of the words "noho," after the word Gunganarain in the third jowaub-ool-jowaub, dated the 13th of May 1847, was not discovered or thought of until the court requested plaintiff's vakeels to explain the discrepancy, which was apparent in the corrected plaint of the 3rd August 1847, when compared with plaintiff's jowaub-ool-jowaub of the 13th of May previous. This omission on the one hand, and the subsequent correction of the plaint on the other, without any allusion to it, makes the case very suspicious; and the wording of the latter portion of the jowaub-ool-jowaub will hardly bear out the construction, which has been put upon it by plaintiff in his appeal. I consider, therefore, that the real mouzah might have been at once made known, had plaintiff been clear and explicit, instead of his having taken advantage of the replies of the several defendants, and I think he should suffer for the consequences. Had the mouzah been as he wishes it, Khord Byekuntpoor, he should have called it a "tuffahushee" mouzah, which would have at once settled

the matter. Again, although both mouzahs are entered in the papers of 1196 and 1197 B. S., still they are omitted in the quinquennial papers of 1202 B. S., nobody on the part of the talookdar, putneedar, ever claimed the disputed land as *Khord* Byekuntpoor, either in the civil courts or before the revenue authorities, when cases were pending before them. *Khord* Byekuntpoor is not entered in the "shoomaree" papers of 1230 B. S., but Byekuntpoor Bhugwanpoor only, and although plaintiff endeavoured to get possession of the lands, and, by force and against Mooroolleedhur Biswas defendant's will, took from him a kubooleut, the land was not even then called *Khord* Byekuntpoor. I maintain, then, that plaintiff has never been in possession of the land in dispute, and that it does not belong to his malgoozaree talook. And as I can find no sufficient reason for disturbing the decree of the lower court, I hereby confirm it, and dismiss the appeal: costs throughout to fall upon appellants.

THE 18TH APRIL 1850.

Suit No. 5 of 1849.

Appeal from the decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated 2nd March 1849.

Gunganarain Roy, Plaintiff,

v rsus

Bishumbhur Bedyabhoosun and others, Defendants.

Syud Koorbawn Ally, Oozurdar.

SUIT to obtain possession of beegahs 125, with bunds, &c., in part of beegahs 1,751 of jungle, in mouzah Endkatah, the purchased mouzah of plaintiff, with value of rice, &c., for the year 1252 B. S., laid at rupees 4,714-9, by the reversal of an order issued under Act IV. 1840.

Plaintiff states that he purchased, by a kuballa, dated 11th Pous 1239 B. S., for the sum of rupees 729, from Musst. Anund Coomaree, the entire lakhiraj mouzah by name Endkatah: a small portion of the estate was cultivated, but he raised bunds, cut the jungle, and extended the cultivation. During the year 1252 B. S. plaintiff cultivated nij jote 125 beegahs, with rice, &c., and Bishumbhur, the principal defendant, dispossessed him therefrom *vi et armis*. Before the magistrate the aggressors were punished, and he, plaintiff, was made to sue defendant for possession under Act IV. 1840, by suit No. 88. To this suit Bishumbhur, defendant, replied, and as it appeared that he was in possession of the land as burmottur, and that Koorban Ally held 12 beegahs as peerottur, the joint magistrate dismissed the case, and the session judge confirmed the order; before the criminal courts it was stated by Bishumbhur that he,

plaintiff, had received from Musst. Anund Coomaree an ekrar-namah to the effect that 137 beegahs of land, held as lakhiraj by Bishumbhur and Koorban, had been excluded from his kuballa, and a copy of the said ekrar was filed by Bishumbhur, but he, plaintiff, denies ever having received, or registered in the office of the register of deeds, any such ekrar, and says it must have been done fraudulently by the mooktear of the deceased seller and the registry omlah: he knows nothing of Hurrypershaud Roy, mooktear, and he never authorized him to receive or settle about any money in any Regulation V. 1812 case. The alleged danputtro sunnud has never been acknowledged, it is a forgery: the measurement papers and the boundaries specified therein do not tally with the alleged sunnud and ekrar; and though the lakhiraj may have been resumed, it is still pending in appeal. Plaintiff therefore sues for possession, &c.

Bishumbhur, defendant, replies that the disputed land, beegahs 125, jungle, &c., laid claim to by plaintiff, is his lakhiraj, obtained from Gopcemohun, husband of Anund Coomaree; that he cultivated it at great expense, raising bunds, &c.; that the joint magistrate went to the spot and decided the Act IV. case in his favor; that he was no party to the kuballa, or deed of sale; and whether his and Kurban Ally's lakhiraj be deducted therein or not, cannot affect his possession, which is supported by the ekrar which was received by plaintiff from Anund Coomaree: he adds that the kuballa and ekrar-namah were registered on one and the same day simultaneously in the register of deed's office: that mention of this ekrar was made in a Regulation V. 1812 suit, in a petition, dated the 7th of Aughun 1247, in which Pauchoo Roy was concerned, as well as in Hurrypershaud Roy mooktear's petition filed in court. He files copies of these documents, says they were not prepared in collusion with any body, and Hurrypershaud was still Gunganarain's mooktear. He can prove his possession all along, and since the resumption of the lakhiraj tenure it has been settled with him, and whether his sunnud was registered or not cannot avail plaintiff, &c.

Shunkursun Chuckerbutty, defendant, replies in support of defendant, and in addition says that he cultivated the land in 1252 B. S., on behalf of Bishumbhur; plaintiff plundered and carried off the crops, and he purposes bringing an action against him.

Two jowaub-ool-jowauhs are filed by plaintiff, denying the plundering, and urging that the crops belonged to him, plaintiff, &c.

Koorban Ally, oozurdar, petitions that Anund Coomaree gave him, by a sunnud, dated the 15th Assin 1259 B. S., beegahs 12 of land as peerottur, and plaintiff cultivates the said parcel as his ryot, but has never alluded to it.

No other parties appeared.

The principal sudder ameen seems to have taken an immensity of trouble in sifting this case. He examined the registry omlah and

the registers, instituted various enquiries, and then delivered his judgment. He says he found that *one* mooktear and *one* witness registered on one and the same day, at one and the same place, consecutively, both kuballa and the ekrarnamah, which have been referred to; and he cannot doubt but that they were *bonâ fide* documents; he does not believe there was any fraud or collusion in the office of the register of deeds. The joint magistrate too also examined the two deeds, and, finding them to be genuine, he dismissed Gunganarain's case, which had been instituted under Act No. IV. 1840. The court considers that plaintiff did receive the ekrarnamah, and, in doing so, his object was to protect himself against other claimants coming forward to claim land in excess of the quantity, beegahs 137, which the seller, Musst. Anund Coomaree, had granted away as lakhiraj. By the resumption court's fysalah, No. 76, dated the 20th of January 1848, it appears that from dags No. 85 up to 107, including jungle, the area has turned out beegahs 119-4-7, and it is not only in the possession of Bishumbhur Bidyabhoosun, defendant, and his, defendant's, under-tenants, but the tenure has been settled with Bishumbhur as the occupant, and Government has received revenue therefrom since 1849, which Government would never have taken had he, defendant, not been in possession. By the ameen's map, &c., by the evidence of witnesses, as well as by the proofs which have been tendered by defendants, it is clear that defendant, long before plaintiff's purchase, did go to a heavy expense and clear away beegahs 34-15 of land, in part of his grant of beegahs 125 jungle and puteet, and though plaintiff's witnesses may depose to the contrary, he cannot believe them, and their evidence is opposed to the record, because plaintiff sues for 60 beegahs, whereas by the ameen's papers only 34 beegahs are found to be in a state of cultivation. The difference plaintiff was unable to point out, and had he cultivated it, the land surely would have been forthcoming. Again, had Hurrypershaud, plaintiff's mooktear, played tricks and taken away money, or settled about it without his, plaintiff's, authority, plaintiff would have discharged him, whereas he is still in his employ: for the above reason the principal sudder ameen sees no necessity for interfering with the order issued by the joint magistrate under Act IV. 1840, and confirmed in appeal by the session judge, and although defendants are not clear as regards the case No. 22, which was instituted in the moonsiff's court, still it cannot affect them. Further, by looking at the special commissioner's roobakaree, dated the 17th of June 1847, in which plaintiff was appellant, it appears that the entire lakhiraj comprising 4,000 beegahs, has been resumed, and with it, of course, defendant Bishumbhur's tenure of 125 beegahs, who was a claimant; but this resumption has not affected defendant's rights to the land as held by him. The fysalah No. 140, dated 30th September 1842, of the late principal sudder ameen of this zillah, is, moreover, of no avail, and it is preposterous

in the ameen having given in a kyfeut in favor of plaintiff, as it is so thoroughly opposed to the real state of the case. The principal sudder ameen, therefore, dismisses plaintiff's case, with costs.

Gunganarain, plaintiff, appeals. He does not advance any thing which has not been already noticed; he relies on the fact of the land at issue and claimed by defendant as his lakhiraj, not having been entered in his kuballa; he declares the ekrar to be false, and though Government may have settled the land with defendant, and the uncovenanted deputy collector have instituted proceedings regarding it, his rights cannot be affected thereby, he points out again that defendant kept back all mention of the case No. 22, which he brought for revenue against plaintiff, and afterwards withdrew, saying that it was compromised, &c., and argues that, as the entire lakhiraj was purchased by him, he is entitled to all land included within his boundaries.

Bishumbhur Bidyabhoosun defendant (respondent) appeared without notice.

This suit was argued on the 16th and concluded this day.

JUDGMENT.

This case rests on the validity or otherwise of an ekrarnamah, which was executed by Musst. Anund Coomaree on behalf of Gunganarain, plaintiff, whereby beegahs 137, including Bishumbhur defendant's lakhiraj and Koorban Ally oozurdar's pecrottur were to be excluded from the kuballa agreeably to which she, Musst. Anund Coomaree, had sold the lakhiraj estate, called Endkatah, and these lands were not to be interfered with by the purchaser, Gunganarain, plaintiff, appellant. This said ekrarnamah was registered at the same time and place, and by the same parties, before the acting judge of the Jungle Mehals on the 29th of December 1832, as the kuballa, or deed of sale, and it is out of the question to suppose that it was a forgery, or that Gunganarain, the purchaser by the kuballa, was ignorant of the ekrarnamah. The several enquiries which have been made into the matter, and the pains the principal sudder ameen evidently took to ascertain whether the ekrar was genuine or not, lead me to suppose that the document was *bona fide* executed. And as plaintiff sued for possession, saying that 60 beegahs of land were in cultivation, and it has been clearly established that only 34 were in that state, I do not believe any thing which has been advanced by him; and he has, in my opinion, fraudulently brought this action, hoping to carry it by charging the omlah of the register of deeds with collusion. The decree of the principal sudder ameen is in every way correct, and I hereby confirm it, rejecting the appeal.

THE 19TH APRIL 1850.

Suit No. 254 of 1848.

*Appeal from the decision of Moulvee Abdool Azeez, Moonsiff of Oundah,
dated 24th May 1848.*

Dusrut Kurr, (Plaintiff,) Appellant,

versus

Nubbin Chund Goshain, Defendant.

SUIT to recover the sum of rupees 20, *plus* annas 15 interest; total rupees 20-15, which, plaintiff states, defendant borrowed from him on the 11th of Assin 1254 B. S., to enable him to pay to Government some revenue which was due by him: defendant gave no bond, but promised to repay him in the course of a few days. Not having discharged the loan, plaintiff sues for it.

Defendant repudiates the loan, says it is unusual to borrow money without a bond. There was a dispute between him and plaintiff, and plaintiff has brought this action and another, No. 7, for rupees 251-14 against him. The resumed lakhiraj mehal, for which plaintiff states he advanced him cash, is held by many sharers, and there was no necessity for him, defendant, to pay the revenue alone.

In his jowaub-ool-jowaub, plaintiff explains that the estate has been divided among the sharers: that the revenue was paid in separately by them for the kist of Assar: that he, plaintiff, is the mahajun of the sharers, and, as defendant fell in arrears for the kist of Assin, he advanced him the money.

A further petition was given in by plaintiff on the 22nd May 1848.

The moonsiff, disbelieving the evidence of plaintiff's witnesses and commenting on the contradictions which are apparent, dismisses plaintiff's case, stating that, as his case was not proved, he had returned the jumma-khurch accounts, and it was necessary to summon plaintiff's other witnesses which he had named, as they were not entered in his *issumuyveesy*.

The appeal is made by plaintiff, who urges that, though there may be slight discrepancies in the evidence, the main point, the loan, has been proved; and had the respectable witnesses he had mentioned, been summoned, his case would have been fully proved, &c.

JUDGMENT.

This case having been decided on a close holiday, the 24th of May 1848, the decree is illegal. I consequently decree the appeal, and remand the case for trial *de novo*, to the moonsiff.

Value of the stamp paper to be refunded in the usual way.

THE 20THth APRIL 1850.

Appeal No. 6 of 1849.

Appeal from the decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated 22nd June 1848.

Musst. Khema Dabya, Pauper, Plaintiff,

versus

Musst. Bhowany Dabya, Defendant.

SUIT for possession of beegahs 12-19-5 of lakhiraj rice land, with house and ground attached, situated in mouzah Sulkace Hurrynugur, laid at rupees 1,407-8, with wassilat from 1245 to 1252 B. S.

It appears that there were originally four brothers, who held various mouroossee property, lakhiraj, &c., which they divided equally among themselves. At the period of this division Nubbeen Mohun Gangoolce, the deceased husband of plaintiff, was one of the parties to the division; as his father was then dead, he obtained his 4 annas share, and continued in possession up to 1226 B. S. When he died, she, plaintiff, and Musst. Bhowanny, her mother-in-law, succeeded to the property of Nubbeen, and, having been in possession thereof, were ousted by defendants, whereupon the two jointly sued them as paupers in suit No. 2428. A compromise was effected, beegahs 7-10 were allotted to the mother of the four original sharers, and beegahs 12-19-5, with a house facing to the north and adjoining

Note. The English date is illegible.

land, were, agreeably to the kubool-jowaub, which had been filed, decreed by the sudder ameen of Burdwan on the 9th of Jyte 1242 B. S., in favor of the two women, plaintiff and her mother-in-law. Plaintiff states she was put in possession, but in the month of Assar 1245 B. S., she was ousted by defendants, and although suit No. 2428 was brought jointly by her mother-in-law, she, as the legal heir of her deceased husband Nubbeen, sues solely for her share, and claims re-possession of the land decreed to her by suit No. 2428, &c.

Musst. Bhowanny defendant, plaintiff's mother-in-law, replied that the decree issued in suit No. 2428 was given jointly in favor of the two plaintiffs, viz. herself and her daughter-in-law, the present plaintiff; they were put in possession accordingly, after which Kishen Mohun Gangoolce, one of the defendants, received possession of plaintiff's recognized share: defendant states that she is in occupancy of her own 8 annas share, and plaintiff has no right to it.

Kishen Mohun Gangoolce, defendant, replies by admitting every thing up to the issue of the decree No. 2428, but states that plaintiff, on various occasions, borrowed money from him, and, having become heavily involved to him, he brought an action against her, No. 143, and, obtaining a decree, took out execution No. 132, and having attached plaintiff's share, beegahs 6-5-0½, caused it to be

sold: he, defendant, becoming the purchaser at rupees 35-12, he obtained possession, and holds it since 1251 B. S. He adds, Bhowany is in possession of her own share, the defendant holds no other land of plaintiff.

In her jowaub-ool-jowaub, plaintiff denies ever having borrowed any thing from Kishen Mohun Gangoolee, defendant, pleads total ignorance of the fact of the action having been brought against her, a decree having been given, execution taken out, and her share having been attached and sold. She is on bad terms with Kishen Mohun. Musst. Bhowany has leagued with him, and as she is entitled to her deceased husband's property, she sues for it.

None of the other defendants reply.

Having heard witnesses on both sides, the principal sudder ameen referred to fysalah No. 2428, found that the decree was given jointly in favor of plaintiff and her mother-in-law, Musst. Bhowany, for possession of beegahs 12-19-5, and again by reading the two fysalahs, Nos. 143 and 132, as well as the certificate of sale, which was tendered by Kishen Mohun defendant, he discovered that plaintiff's rights in the decreed land had been actually sold and transferred to Kishen Mohun defendant. Hence he was of opinion, particularly as Musst. Bhowany was in possession of her share according to the decree she had obtained jointly with plaintiff, that plaintiff could not now bring this action *alone* to succeed as sole heir to her husband's property. With respect to plaintiff having been dispossessed by defendant, the court observes that one witness says he heard of it some ten years ago, while another knows nothing about it, but only of a squabble between the parties and others.

Again, plaintiff now sues for possession on one beegah of bustee land, whereas by suit No. 2428, only 5 cottahs were decreed to her, and the court should have added the present action is for possession of a house facing the south instead of the north agreeably to the said decree. However, under all the circumstances, he thinks that repossession should be given to plaintiff of her 5 cottahs bustee land, as well as of the house agreeably to decree No. 2428, and he decrees accordingly; and, in consideration of plaintiff being a pauper and an old woman, and costs cannot be recovered from her, the court remits them as well as the costs of Musst. Bhowany and others.

Two parties too were fined for contempt in 50 rupees each, and the order is added to the decree instead of having been separately recorded.

Plaintiff appeals, maintaining that she is entitled by the shasters to the 4 annas share, which fell to her deceased husband's lot at the period of the division of the mouroosee property, and which, on his death, became her's solely and entirely as the only legal heir. She adds that her dispossession has been proved by two witnesses, while two witnesses who did not appear have been fined; and had they appeared and a local enquiry been instituted, her case would have

been fully established. She objects to the decree in her favor being only for 5 cottahs and the house, and says she demands the whole.

The appeal was admitted by my predecessor on the 14th of April 1849, and plaintiff is evidently a pauper.

The case was argued yesterday and concluded to-day.

JUDGMENT.

The real point for decision is whether plaintiff, as the heir of her deceased husband, can, according to the shasters, claim the whole of the property left by him on his death to the exclusion of her mother-in-law, Musst. Bhowany, who cannot be considered in the light of a legal heir. I maintain that as plaintiff brought an action *jointly* with her mother-in-law, which led to a compromise among all the sharers, ending in a decree being given by the sudder ameen of Burdwan, No. 2428, dated the 9th of Jyete 1242 B. S., in favor of *both* parties, that she, plaintiff, has forfeited all claim under the Hindoo law, by setting aside that decree, to sue for the entire share *alone*. By this decree, plaintiff and her mother-in-law were put in possession of their respective shares, and the mother-in-law still retains her's, while plaintiff has been sold out of her's by a regular decree of court, and cannot now recover it. I agree, therefore, so far with the lower court; but I see no reason why plaintiff should be put in re-possession of the 5 cottahs of bustee land, or of the house at issue: her witnesses do not prove that she has been ever ousted, and they know nothing of the matter. I therefore must amend this portion of the decree. Ordered, therefore, that the appeal of plaintiff and her suit be dismissed, and the principal sudder ameen's decision be amended as above. Costs throughout to fall upon plaintiff, appellant.

THE 24TH APRIL 1850.

Appeal No. 3 of 1849.

Appeal from the decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated 18th May 1847.

Radhanath Dey, a pauper, Plaintiff,

versus

Bulram Patur and others, Defendants.

SUIT for possession of certain lands, with wassilat from 1241 to 1246 B. S., laid at rupees 564.

Plaintiff states that his father, Pershaud Dey, held the resumed lakhiraj land of Ulluck Patur, estimated at beegahs 37-10, at an annual jumma of rupees 30. The former talookdar, Surroop Syenee, deceased, brought an action for the jumme rights as belonging to Kumul Patur and others; his father laid claim to the land, but, as Kumul Patur confessed judgment, his claim was not gone into. His father Pershaud appealed, and obtained a decree in the principal

sudder ameen's court at Burdwan, with possession. After this defendants ousted his father; the talookdar sued for his revenue; Pershaud objected to pay as he was not in possession; but he was overruled, and a decree given in the talookdar's favor, plaintiff's father being told to sue the parties who had dispossessed him. His father then petitioned as a pauper and died. He being his heir sues for possession with wassilat and interest from 1241 to 1246 B. S., after this, it is alleged, the talookdar took out execution of his decree against Pershaud, plaintiff's father, and, having attached the land, caused his jummye rights to be sold, and defendants are in possession, &c.

On 8th June 1846, plaintiff gave in a supplemental petition to the effect that he had two brothers, one of whom had died unmarried and the other was a minor, under his care and protection, together with their old mother: he at the same time makes Heerachand Banerjea, talookdar of mouzah Usunbunnee Bindrabunpoor, a defendant.

Rammohun Patur, defendant, replies that he was in possession of hooda Assunbunnee as the durputneedar, by a mortgage, and, during the time he was in possession, plaintiff's father, Pershaud Dey, did not pay up his rent for the years 1242 and 1243 B. S., on which his crops were attached under Regulation V. 1812. Plaintiff's father sued for the reversal of the attachment by suits Nos. 464 and 258, and obtained decrees. On appeal, the disputed land was decreed in his, defendant's, favor, the attachment was upheld, and, in carrying out execution, a portion of the demand was recovered, and a heavy balance is still due. In 1247 B. S. his (defendant's) durputnee was sold to Heerachand Banerjea, and it is alleged that plaintiff has joined with Bulram Patur, his (defendant's) enemy, and has brought this action to avoid payment of his father's debts, &c.

Sreesteedhur and Gooroochurn Chatterjee reply that they have not dispossessed plaintiff. They say that two parcels of the disputed land were made over to them, defendants, on the 25th Phalgun 1239 B. S., by Bulram Patur, to cultivate as bhagjote. During the years 1240 and 1241 B. S., they cultivated it, and divided the produce; • Bulram receiving his share in virtue of his alleged jummye right. From 1242 B. S., the disputed land remained in the possession of Bulram Patur and his under-tenants, as is apparent from Bulram Patur's admission in plaintiff's father's suit, No. 258, as well as in another case: they refer to the execution decree case in which the land was sold, and purchased by Kumul Syenee, &c.

Bulram Patur replies that he knows nothing of plaintiff's case, he has connived with the other defendants and brought it, he was formerly an under-tenant of plaintiff's father for a short time, and an exchange of some land was effected, but he has not dispossessed plaintiff.

Lochun and two others petitioned, but, being after time, they were not admitted to reply.

Plaintiff, in his jowaub-ool-jowaub and supplemental reply, says, he is the heir and only party who ought to bring this action, as the other heirs are dependant upon him; that his father sued as a pauper, and, as no land can be sold while his suit is pending, there was no necessity for him to apply for the reversal of the sale; he denies that there ever was any exchange of land between Bulram Patur and his father, Pershaud Dey. He urges that it is clear from the reply of the two defendants, Sreesteedhur and Gooroochurn, that they have dispossessed him, as they applied to their talookdar for a dakhil-kharij, and he adds that all the defendants have leagued against him.

The principal sudder ameen inspected the pauper nuthee No. 28, and having heard witnesses on both sides, he called upon Bulram Patur to prove his under-tenancy, and that land had been exchanged as stated, but he failed to do so. And, as he considered plaintiff was entitled to tusuruffaut, he has made Bulram Patur, defendant, the principal, responsible for it, particularly as it appeared that he was at the time in possession directly by him, or indirectly by his under-tenants; again, although plaintiff's several witnesses state that Bulram, Rammohun and others, defendants, dispossessed him, the court cannot believe them, and their evidence is opposed to suit No. 488, dated 17th September 1839, nor can Sreesteedhur and Gooroochurn Chatterjee be answerable for the tusuruffaut, as they were simply the bhagiotedars of Bulram Patur, the principal. With respect to the wassilat, the court could not credit the testimony of plaintiff's witnesses, as they exaggerated the amount, and made it in excess of that specified in fysicalah, dated the 18th of September 1841, and as a local enquiry was then instituted into the matter of tusuruffaut, and the amount was fixed at only rupees 396 *plus*, interest rupees 168; total rupees 564, and the former principal sudder ameen permitted plaintiff to sue only for that sum by a decision, dated the 3rd of February 1845, the court did not think he was entitled to more now for the years 1241 to 1246 B. S. The court further thought that plaintiff was correct in suing alone, and defendant's objection to his doing so was invalid; and it remarked that by examining copy of a deposition of Bulram Patur, which was taken in suit No. 258, it was clear that he, Bulram, had admitted that he was in occupancy of Pershaud, plaintiff's father's land, the revenue of which he had divided with him, whereas he now states that some land was exchanged, which is evidently false. Further, by the nuthee it is established that plaintiff's father, Pershaud, after he obtained his decree, was put in possession and then was dispossessed, while Bulram Patur continued in occupancy during the two years 1242 and 1243 B. S., and as, in execution of the decrees for arrears of rent, which was obtained by Kumul Syenee against Pershaud Dey, he, Pershaud, plaintiff's father, was sold out, and his rights lapsed to the purchaser, the court could not grant possession, but only tusuruffaut. A decree was therefore given for rupees 564, with costs against

Bulram, with interest up to date of payment. Government to deduct its expenses from the decree on realization, and the other defendants' costs to fall upon plaintiff.

In the original plaint filed by the plaintiff as a pauper, he sued for rupees 1,343; but this was ordered to be reduced to rupees 564, agreeably to the principal sudder ameen's fysicalah, dated 3rd February 1845, No. 28, and agreeably thereto, on the 8th April 1845, he filed a corrected plaint, which was made over to the sudder ameen, and on the abolition of his office to the principal sudder ameen on the 5th of March 1846. Radhanath appeals as a pauper, and he was permitted to do so by my predecessor on the 3rd of February 1848. He urges that he has proved his dispossession by witnesses; that all the defendants should have been cast, and not Bulram Patur, and that the costs of the defendants, who have been excluded from the decree, should not have been thrown upon him.

This case was argued on the 19th instant, and concluded to-day.

JUDGMENT.

The decision of the principal sudder ameen I consider to be correct. And as the defendants, who have been absolved thereby, were no parties to the alleged dispossession, or to receiving the produce of the lands, they cannot be made responsible with Bulram Patur, who was the principal throughout, and in possession, nor can they be charged with their own costs, or be jointly cast with Bulram Patur in the said decree. Plaintiff's father, Pershaud Dey, having been sold out of all his rights in virtue of a decree of the civil court, plaintiff cannot have possession granted to him until the said decree be reversed; and, as plaintiff has had ample tukuruffaut decreed to him, I think he should be content. Ordered, therefore, that the appeal be dismissed, and the decree of the principal sudder ameen upheld. Costs to fall upon appellants.

ZILLAH CHITTAGONG.

PRESENT: A. SCONCE, ESQ., OFFICIATING JUDGE.

THE 3RD APRIL 1850.

No. 506 of 1847.

*Appeal from a decree of Moulvee Syed Ahmud, Additional Moonsiff of
Deeang, dated 3rd August 1847.*

Dabee Dass Sen and Goluk Chunder Sen, (Plaintiffs,) Appellants,
versus

Mohun Lall Sookul and others, (Defendants,) Respondents.

THE facts at issue in this suit were amply considered by me when, on the 16th November last, I disposed of the appeal No. 56 of 1845.

On the 10th January 1846, the plaintiffs seem to have instituted this action to justify themselves against the liability, which Mohun Lall Sookul sought to impose on them, regarding certain lands in mouzah Hoolayn, namely, daghs 1277, 1417, 1971, 2007, 2185, and 1549, as represented in the last measurement of the collector: these plaintiffs declaring that the land belonged to turuf Ramkishwar Sen, while Mohun Lall Sookul maintained that it belonged to turuf Shumboo Canoongoe. I have already fully stated the reasons that led me to consider that Mohun Lall Sookul had failed to prove his plea regarding the first five daghs, and that Dabee Dass Sen had shown the land expressed by them to have belonged to his estate: and both from the evidence adduced in this suit as well as in the other suit I must hold dagh 1549 to be in the same position. I must declare then that the six daghs sued for belong to the turuf Ramkishwar Sen. If this suit had come before in the first instance, I should have been disposed to make the plaintiff bear the costs: as it is, the parties may each pay their own costs.

THE 3RD APRIL 1850.

No. 418 of 1847.

*Appeal from the decision of Mr. Snell, Moonsiff of Deeang, dated
25th June 1847.*

Mohun Lall Sookul, Appellant,

versus

Dabee Dass and others, (Plaintiffs,) Respondents.

FOR reasons corresponding with those for which I rejected the appeal of this appellant in case No. 417, on the 15th November last,

I reject this appeal. The appellant was no party to the suit from which he appeals, and his objection is not to be listened to.

THE 16TH APRIL 1850.

No. 11 of 1849.

Appeal from the decree of Pundit Srenath Bidyabagish, Principal Sudder Ameen, dated 10th July 1849.

Mahomed Bukhtawur, (Plaintiff,) Appellant,

versus

Lushker Alee and Ahmudoollah Chowdhree, (Defendants,) Respondents.

THE appellant has no grounds for this appeal. The only question is whether or no he is bound by the terms of a pottah for dhoon 31 of land, which was granted to him by the respondents, the farmers of chur Sidhee. In conformity with the terms of the pottah, the respondents acquired a summary decree for arrears due on account of the years 1252 and 1253; and averring that his liability under the pottah is of no effect, the plaintiff (appellant) seeks to quash the summary decree, and to recover the rent thereby paid by him.

The appellant, in support of his claim, asserts that inasmuch as the respondents' original settlement of the chur was revised and the jumma reduced, so, in conformity with the spirit of that arrangement, the farmer's claim upon him is changed. He states, in fact, that the farmer's original settlement was quashed, and that, excluding the uncultivated land, their settlement was renewed for the cultivated only; and he would have it inferred that as the land of his pottah (as he asserts) is waste, so for this waste land he owes no rent.

Now it is true that the farmer's settlement was revised, and the rent reduced in conformity with the results of a local survey; but, both from the terms of the revised pottah itself, and from the commissioner's letter, dated 2nd October 1844, by which the terms of the revised settlement were prescribed, it is clear that the whole chur was left in the possession of the farmer. Indeed it is a condition of the settlement that, during the continuance of the lease, the farmer would bring the cultivable land into cultivation.

Again, the appellant has relied on a letter addressed to the commissioner by the secretary to Government, regarding a settlement of the Chittagong district, on the 2nd May 1842, in which the principle of settling mehals comprising much waste land was discussed. But in truth this letter tells against the appellant. It is said indeed that the Government officers should demand rent only from land that was brought into cultivation; but it was the express object of the remarks, at the same time, to show that the lessee should have the command of the waste land during the period of his lease, and that, at the expiration of that period, a new settlement should take effect.

It is to be observed that the appellant nowhere professes that his hold upon the land of this pottah has ceased. The pottah he would have good for one purpose, not good for another; good to affirm his possession, not good to pay the rent stipulated.

The appeal is rejected, and the order of the lower court affirmed.

THE 16TH APRIL 1850.

No. 12 of 1849.

Appeal from the decree of Pundit Srenath Bidyabagish, Principal Sudder Ameen, dated 10th July 1849.

Mahomed Bukhtawur, (Defendant,) Appellant,

versus

Lushker Alee and Ahmudoollah, (Plaintiffs,) Respondents.

THIS appeal is made against a decree for arrears of rent for the year 1253, made in favor of the plaintiff (respondent) by the lower court, on account of a pottah held by the appellant from the respondents as farmer of chur Sidhee. The appellant rests his case upon the pleas brought forward in the appeal No. 11, which I have this day disposed of; and I need add nothing on this occasion: for the reason already in that case assigned, I dismiss this appeal also.

THE 18TH APRIL 1850.

No. 13 of 1849.

Appeal from the decree of Pundit Srenath Bidyabagish, Principal Sudder Ameen, dated 10th July 1849.

Sheikh Ahmudoollah and Lushker Alee, (Defendants,) Appellants,

versus

Mahomed Bukhtawur, (Plaintiff,) Respondent.

THE plaintiff (respondent,) being a tenant under the appellants as farmer of chur Sidhee, sued to recover possession and wassilat of d. 3-1, of which, he alleged, they had dispossessed him under cover of a summary decree passed in favor of Buksh Alee and others, under Act IV. 1840; and in the plaintiff's favor the principal sudder ameen, Pundit Srenath, decided.

Before disposing of the case, two ameens, first Greeshchunder and afterwards Syed Ashun, were deputed to hold a local enquiry; and without detailing his reasons for the preference, the principal sudder ameen has been guided by the map submitted by the ameen Greeshchunder.

That the respondent is a tenant under the appellants is not disputed. Nor is the pottah by which Mahomed Bukhtawur holds his land disputed. Within the tenure conveyed by the pottah four

specific patches of land are described; and Mahomed Bukhtawur avers that out of the d. 14-12-3, comprising the second of the patches, he was dispossessed of d. 3-1.

The question before me is this, whether or no the disputed land falls within the defined boundaries of the respondent's (plaintiff's) pottah; or rather whether the respondent has proved that it so falls. As I have said two ameens were deputed to sift the dispute: by the map and proceedings of Greeshchunder the respondent abides, while the appellants maintain that Syed Ashun alone has done the case justice.

The maps of the two ameens correspond sufficiently, without obliging me to decide the appeal upon the assumption that they conflict; and in fact from the map of Greeshchunder, taken in connection with the description given by the respondent of the boundaries of the disputed land, I must hold that the claim is not proved.

First, then, I observe that the land pointed out by the plaintiff to the ameen as the disputed land, does not correspond with the description given of it in his plaint. The ameen was required to show in his map two separate parcels of land, whereas in the plaint one parcel is spoken of. And not only so; the boundaries exhibited by the ameen do not correspond with the boundaries of the plaint. For example, plaintiff stated that the south boundary of the land claimed was Kassim Beoparee's land, only to the eastward of it; whereas it appears from the ameen Greeshchunder's map that the land of Ashun and others lies direct to the south of what plaintiff showed to be the disputed land.

Next I have to say, that the second patch of the pottah has for its south boundary Kassim Beoparee's howlah; now not only is the parcel last spoken of most plainly bounded by land not held by Kassim Beoparee, but, moreover, if I take, as respondent wishes me to take, Greeshchunder's map as exhibiting the exact position of the disputed second parcel, then again, not Kassim Beoparee's land, but the Hingoreah nullah would form to a considerable extent the south boundary of the second bund or patch of the pottah.

In the same manner I find the north boundary of the land claimed by the respondent to be by no means reconciled with the boundary of the pottah. In the latter, the north boundary is Sham Putwaree's tank; now the respondent would seek to bring within his pottah, land far to the eastward of the tank.

Further, it is admitted that the Hingoreah nullah formed the east boundary of respondent's pottah; but it is disputed which of two branches into which this nullah has resolved itself, was the original nullah. There is only one branch now open; and if this branch be the original nullah, as for the reasons above given I gather good evidence, then unquestionably the disputed land is altogether without the limits originally assigned to the respondent's tenure.

I add that the respondent has given no explicit evidence of the circumstances under which his alleged dispossession arose. It is not enough to show, as his witnesses show, that his ryots were interrupted in their ploughing: plaintiff averred that he was turned out of the land in consequence of certain proceedings under Act IV. 1840, but he has been at no pains to illustrate this main ground of his plea.

I find accordingly that the plaintiff (respondent) has not made out his case, and, reversing the principal sudder ameen's decree, I must so decree. Excepting the costs of Lukea Banoo, Mahomed Bukhtawur must bear the rest.

THE 20TH APRIL 1850.

No. 15 of 1849.

Appeal from the decree of Pundit Sreenath Bidyabagish, Principal Sudder Ameen, dated 11th July 1849.

Mohes Chunder and Kashee Chunder, (Plaintiffs,) Appellants,

versus

Tarenee Sunker Canoongoe and others; (Defendants,) Respondents.

I HAVE only to consider on this occasion whether a deed of alienation, whereby d. 3-6-9-2 of land within turuf Goureechurn Canoongoe, for Sicca rupees 999, was transferred from Tarenee Sunker Canoongoe, the proprietor of the turruf, to one Mogun Dass, was a *bonâ fide* deed of sale, or, having the form of a deed of sale, was tantamount to a mortgage. The plaintiffs (appellants) say that it was a mortgage; that it was granted in 1178 Muggy; that under it the land was held up to 1198, when the turruf in question was sold for arrears of rovenue: and 10 or 11 years after that, seeing that, by virtue of the sale, the land in question passed from their possession, they sue to recover the principal of the sum advanced, together with interest due thereon subsequent to the revenue sale.

The plaintiffs' (appellants') witnesses say that they understood the transaction to be a mortgage, and that an agreement was given by the ostensible buyer, Mogun Dass, to Tarenee Sunker Canoongoe, binding him to restore the land on the repayment of his loan. But I agree with the principal sudder ameen that, in this case, it is impossible to abide by the testimony of the witnesses, in opposition to the positive terms of the kuballa produced. This kuballa purports to be in the plainest terms a deed of sale: it recites that the buyer may alienate the lands transferred to him, by sale or gift; it affirms the right to be in him and his heirs, and disclaims any title for the seller or his heirs. To prove the mortgage we have nothing but the verbal evidence of the plaintiffs' witnesses: no agreement is

produced; and, on the other hand, defendant has adduced three witnesses to show that the transaction was a complete sale.

While we have such a dearth of spoken truth, I feel it to be impossible to set aside the undisputed testimony of this written deed. And, moreover, apart from the merits of the question, I would add that the public cannot be too soon taught that they are not to rely on the possibility of having a deed construed as circumstances may render it profitable; or that oral testimony can be permitted to vary, not in a minor particular but in its very essence, the condition which a deed most distinctly bears.

I must affirm the decree of the lower court, with costs against the appellant.

THE 23RD APRIL 1850.

No. 18 of 1849.

Appeal from the decree of Pundit Srenath Bidyabagish, Principal Sudder Ameen, dated 14th August 1849.

Lala Thakoor, (Plaintiff,) Appellant,

versus

Kamdar Khan and others, Respondents.

IN this case the principal sudder ameen having decreed the principal money of a bond, with interest calculated thereon, against the estate of Sookh Lall Khan, deceased, by whom the obligation had been contracted, the appellant requires me to impose the responsibility created by the decree upon Goomanee Khan and Kamdar Khan, the brothers, Bhulooke, the widow, Goluckchunder, a nephew, and Manik Beebee, the sister-in-law of Sookh Lall Khan, personally. These persons were made defendants in the suit; but the appellant failed entirely to prove that they had succeeded to any property left by Sookh Lall. Appellant says, many people of respectability know that the case is as he represents it; but we can only judge of the evidence he puts before us. Again, he says the principal sudder ameen did not require him specially to prove that the defendants inherited property left by Sookh Lall; but here he is in error, for the plaintiff's attention was called to that matter by the principal sudder ameen's reobukaree of the 8th June 1848. I find no grounds to entertain the appeal, and the decree of the lower court is accordingly affirmed.

THE 24TH APRIL 1850.

No. 10 of 1849.

Appeal from the decree of Baboo Punchanund Banerjee, Additional Principal Sudder Ameen, dated 27th June 1849.

Amjad Alee and Noor Banoo, (Defendants,) Appellants,

versus

Asgur Alee, (Plaintiff,) Respondent.

THE plaintiff Asgur Alee's claim in this action was to recover possession of the interest which, by Mahomedan law, accrued to himself in succession to his father, Hussun Alee, *quoad* the share possessed by him of turuf Meer Hussun Alee. During plaintiff's minority, the defendants, he averred, forcibly dispossessed his mother and stepmother of his father's share of the disputed turuf.

The answer made by the defendants was in this form: they declared that certain itmamdar (or under-tenants) of theirs held a decree against the plaintiff's father for more than 800 rupees; that the widows of the latter, unable to discharge this decree, sold their deceased husband's share of turruf Meer Hussun Alee's to Noor Banoo and Suffer Alee, (son of Amjad Alee;) that instead of a cash payment in liquidation of the sale, they (the defendants) gave their itmamdar a credit on account of arrears of revenue due, to the amount of rupees 600; and that these itmamdar (who held the decree against the plaintiff's father) accepted this credit as payment in full of their claim under the decree.

The additional principal sudder ameen decreed the claim for two reasons: first, he held the sale not to be proved; and second, he held, with reference to the futwa which he called for, that, even if the sale were genuine, it could not be maintained against the plaintiff, who was not a party to it.

After a careful consideration of the proceedings, I am of opinion that the decision of the principal sudder ameen must be maintained. The appellants have entirely failed to prove the genuineness of the sale, and upon this ground alone, without regard to the right which Mahomedan law would justify the respondent in asserting against a valid sale, I dismiss the appeal. The kuballa, or deed of sale, being filed in another suit is not produced in this action; but its counterpart, the receipt granted by the ostensible sellers, is filed: and this receipt, the appellants admit to be equivalent in terms to the deed of sale.

Now it appears that the appellants have adduced only one witness, Dewan Alee, to attest the sale: and if this witness were to be believed, the sale is attested. But it is to be observed that another witness, Abdool Alee, whose name is affixed to the deed, declares that the transaction did not take place in his presence, and that the signature representing his name was not his; and that as regards the

other witnesses, two, the appellants say, are dead, and two have been bought over by the respondent.

Further, I find that on a petition presented by the appellants and others to the collector, on the 31st July 1845, with a view to having their names registered as proprietors of turruf Meer Hussun Alee, they represented the nature of this disputed purchase differently from the terms of the receipt now produced. In that petition the sellers were said to be Manik Beebee and Noor Beebee, (respondent's mother and stepmother); the purchase was said to extend to half of the turuf, and the sudder jumma, for which they were liable, was said to be rupees 244-1-6; but in the receipt granted in acknowledgment of the liquidation of the condition of the sale, and which is filed in justification of the answer made in this action, the sellers are Noor Beebec, Manik Beebee, and Arman Alee; the land sold is d. 2-11, less than half the turruf, that is d. 12-10-3, instead of d. 14-13-2-3: and instead of the sudder jumma being Company's rupees 244-1-6, it is said to be Sicca rupees 193-5-9.

Finally, I will only notice the receipt filed on account of the itmamdars, Mahomed Alee and others, who are thereby shown to have withdrawn the execution of their decree on receiving, through Noor Banoo and Suffer Alee, rupees 600. This may or may not bind the itmamdars; but it certainly does not affect the plaintiff (respondent), nor have I any reason to believe that his mother or stepmother were parties to it. I am not disposed to doubt that some sort of negotiation was undertaken by the appellants in communication with Manik Beebee and Noor Beebee, the widows of Hussun Alee: this, I think, is to be inferred both from their unaccountable silence from the period of their dispossession up to the time that plaintiff, on attaining his majority, instituted this action; and also from the evidence of Abdool Alee, who, it appears, had been told by Dewan Alee that a negotiation for the sale was going forward, but, as already said, Abdool Alee explicitly denies having any knowledge of the sale itself, or of the assent of Manik Beebee and Noor Beebee thereto.

Upon these grounds I dismiss the appeal.

• THE 27TH APRIL 1850.

No. 146 of 1849.

Appeal from the decree of Moulvee Ferahutoollah, Moonsiff of Bhojepore, dated 12th February 1849.

Ranchunder Dey, (Defendant,) Appellant,

versus

Futteh Alee, (Plaintiff,) Respondent.

THE moonsiff has disposed of this case, showing a very erroneous sense of the relative positions of landlord and tenant. It was the

object of the plaintiff to quash a summary decree for rent, which the defendant, Ramchunder Dey, had acquired against him and others : and he declared that, though he on account of some land separately held by him did owe the defendant rent at the rate of rupees 1-3 per annum, he never entered into a settlement with the defendant, either for himself singly, or with others jointly.

The moonsiff, referring to the settlement filed by Ramchunder Dey, with the summary proceedings, found that the plaintiff's name was not entered in it, and that it had been signed by Alee, Budul, and Burkutoollah : for that reason only, so far as the plaintiff was concerned, he quashed the summary decree. But he altogether overlooked the fact that plaintiff might be answerable for the rent of the land, though he was not a party to the settlement of the itmam. New settlements are not made every year : and any man, who buys land, naturally comes into the position of the party by whom the land was transferred to him. In this plaint, plaintiff, for instance, admits that his father had bought Budul's share of the itmam : and moreover in the summary suit plaint, Ramchunder Dey sued Futteh Alee, this respondent, and others, not as the original itmamdars, but as the present occupants of the itmam.

The case must, therefore, be remanded to the moonsiff for further enquiry. He has mainly two matters to consider : first, whether the plaintiff (respondent) is jointly answerable with the other occupants for the rent of the itmam, Alee, Budul, Burkutoollah, or second, whether the land purchased by his father, and now held by himself, is liable for the rent due on it unconnected with the other land with which, originally, it formed one itmam. And, further, the moonsiff should consider what effect the recent settlement of the noabad land of the district may have had upon the older connexion of plaintiff and defendant as itmamdar and talookdar.

The value of the appeal stamp will be refunded.

THE 27TH APRIL 1850.

No. 148 of 1849.

Appeal from the decree of Moulvee Ferahutoollah, Moonsiff of Bhajepore, dated 16th February 1849.

Akbur Alee and Asgur Alee, (Defendants,) Appellants,

versus

Hyder Alee, and others, (Plaintiffs,) Respondents.

I FIND five different appeals turning on one and the same matter ; the attachment and sale by the process of distraint of 21 heads of cattle alleged to be the property of the plaintiffs. The cattle were seized at one and the same time by the same parties, the agents of these appellants ; and the seizure was followed by five distinct sales.

Now in four of these suits it is the purpose of the plaintiffs to show that cattle belonging to them were distrained and sold as the property of others: and in the fifth, though two heads were seized and sold as the property of Hyder Alee as plaintiff, he and the other plaintiffs deny his liability for the alleged arrear.

Evidently the distraint carried through on this occasion, was executed without any regard to the rights of property, or to the liabilities of defaulters.

The moonsiff has acted properly in decreeing the suit in favor of the plaintiffs; and though in appeal as in the court below these appellants (father and son) deny their liability in the matter, throwing the *onus* on the parties by whom the distraint was effected, this plea is evidently not available to them: for, apart from all other considerations, it appears that in answer to a suit filed before the collector, Akbur Alee distinctly admitted that two (Brindabun and Radhamohun) were appointed by him to collect the rents of his talook, and that on their part Sunaoollah was named as distrainer to seize the property of his alleged defaulters.

The appellants are justly answerable for the injustice perpetrated by their agents. The appeal is accordingly dismissed, with costs against appellants.

THE 27TH APRIL 1850.

No. 149 of 1849.

No. 150 of 1849.

No. 151 of 1849.

No. 152 of 1849.

Appeals from the decree of Moulvee Ferahutoollah, Moonsiff of Bhojepore, dated 16th February, 1849.

Akbur Alee and Asgur Alee, (Defendants,) Appellants,

versus

Hyder Alee and others, (Plaintiffs,) Respondents.

THE nature of the cases involved in these appeals is shown under the appeal No. 168, which I have this day disposed of. For the reasons given in that case these appeals are dismissed, with costs.

PRESENT: S. BOWRING, Esq., OFFICIATING ADDITIONAL JUDGE.

THE 17TH APRIL 1850.

No. 507 of 1847.

Appeal against the decision of Syud Ahmud, Additional Moonsiff of Deenang, dated the 3rd August 1847.

Debee Doss Sein and Goluk Chunder Sein, (Plaintiffs,) Appellants,
versus

Mohun Lall Sookul Thakoor, Joynarayan, son of Fukeer Chand, (deceased,) Musst. Ishorce, widow of Petumber Canoongoe, (deceased,) Musst. Beshishree, widow of Bissumbhur Canoongoe, (deceased,) Maghun Wahdadar, Meertunjae, Ramtonoo, and the Collector of Chittagong, (Defendants,) Respondents.

THIS suit was instituted on the 16th January 1836, for correction of the chittahs of 4 kanees, 11 gundahs, and 2 cowrees of land, and the right to the same to be separated from turruff Sumbhoo Ram Canoongoe, and included in turruff Ramkissoree Sein, and annulment of the settlement of annas 13-4 jumma with Maghun Wahdadar.

Total value; 31 13 4

The plaintiffs (appellants) state that the land was transferred to turruff Ramkissoree Sein, in 1136 M., since which date it has been in their possession; that 19 gundahs were settled with Maghun Wahdadar by the collector in 1844 as noabad, at a jumma of annas 13-4, and 3 kraunts, 12 gundahs, 2 cowrees, waste, included in turruff Sumbhoo Ram Canoongoe.

The defendant (respondent,) Maghun Wahdadar, denies that plaintiffs (appellants) have any right to 19 gundahs of land, which he claims as hereditary.

The collector, on behalf of Government, states that 19 gundahs of noabad land were settled with Maghun Wahdadar; the plaintiffs (appellants) having relinquished their claim, and that the plaintiffs have more land by this measurement than by former ones.

Mohun Lall Sookul Thakoor denies the truth of plaintiffs' (appellants') statement.

Meertunjae and Ramtonoo state that the land of plaintiffs (appellants) and mortgaged it to the father of Maghun Wahdadar.

The moonsiff dismissed the suit, on the ground that plaintiffs had relinquished their claim to the land by a petition to the collector, dated the 17th Phalgun 1205 M., and on precedent of an order of Buddeoddeen sudder ameen.

The plaintiffs appeal, repeating their former statement, and quoting an order of the Sudder Court, dated 19th August 1847, which does not appear to me applicable to the present case.

JUDGMENT.

The land consists of

Dags 83, 84, and 87, 19 gundahs noabad ;
 „ 88 „ „ 3k. 12 „ 2 cowries waste.

The authenticity of the petition relinquishing claim to the settlement of the dags 83, 84, and 87, 19 gundahs, was impugned verbally, but not otherwise by the vakeel, and owing to the plaintiffs having offered no objection to the measurement of 1198 M., or to the settlement with defendant in 1844, until 2 years afterwards, I see no reason to disturb the moonsiff's order so far as relates to the 19 gundahs of noabad land, settled with Maghun Wahdadar, and dismiss the appeal in respect to dags Nos. 83, 84, and 87. The waste land described as dag No. 88, k. 3. g. 12, c. 2, forming a part of that decreed by the additional judge in case No. 56 of 1845, on the 16th November last, (page 289, Decisions of the Zillah Courts for November,) I reverse the moonsiff's order.

THE 24TH APRIL 1850.

No. 259 of 1849.

Appeal against the decision of Syud Ahmed, Additional Moonsiff of Deeng, dated 26th March 1849.

Mahomed Baresh, (Defendant,) Appellant, and on his own petition to be made Defendant, Reezooddeen, (Defendant,) Appellant,

versus

Abdool Ali, (Plaintiff,) Respondent.

THIS suit was instituted before the moonsiff to compel the defendant Mahomed Baresh (appellant,) to register a kuballa for the sale of talook Casim Ali, k. 3, g. 16, and 2 cowries of land hustabood jumma, rupees 3-13-7, in mouzah Gateea Denga: estimated value for stamp, rupees 16.

The plaintiff (respondent) stated before the moonsiff that the land, which had formerly belonged to his (respondent's) father, was sold to him (respondent) by the plaintiff (appellant,) on the 12th Bhaadon 1209 M., for 14 rupees, and that although defendants (appellants) previously offered to do so, he now refuses to register the kuballa, or deed of sale.

Mahomed Baresh, the defendant (appellant,) denies having sold the land, or given a kuballa to plaintiff (respondent). He, defendant (appellant,) sold the talook Casim Ali to Reezooddeen, on the 19th Cheyte 1209, for 6 rupees, and gave a kuballa and receipt.

Reezooddeen, defendant, in his petition, stated that he bought the land of Mahomed Baresh on the 19th Chyte 1209, that he had a quarrel with plaintiff (respondent,) who had destroyed his crops.

The moonsiff decreed the case for plaintiff (respondent,) on the ground that the plaintiff was entitled to registration as proprietor of the deed of earlier date, that the second sale was fictitious, and that the decree did not determine the question of sale, or unduly prejudice the kuballa given to Reezooddeen, dated 19th Chyte 1209 M.

The defendants (appellants,) in appeal, repeat the allegation contained in their defence before the moonsiff, and call attention to a difference in the signature of Mahomed Baresh on the different documents.

JUDGMENT.

There are two deeds of sale, kuballas, one dated 12th Bhadoon 1209 M., and the other 19th Chyte of the same year. Both are attested and sworn to by witnesses, and so far the evidence is equally in favor of either; but Reezooddeen, holding the dakhilas for rent paid to the zemindar, is, or until very lately was, in possession of the property, which is also proved by other witnesses. The evidence is therefore in favor of the deed, dated the 19th Chyte 1209 M., and to direct the registration of that of earlier date, would be greatly to prejudice, if not to invalidate, that under which Reezooddeen holds possession. There is, moreover, a very perceptible difference in the signature of Mahomed Baresh as written on the kuballa of the 12th Bhadoon, and on that of 19th Chyte, and on the vukalutnamah. I reverse the moonsiff's order, and decree the case for the appellant, with costs.

THE 24TH APRIL 1850.

No. 668 of 1849.

Appeal from the decision of Abdool Futtah, Moonsiff of Deeanj, dated the 26th July 1849.

Ramkaunt, (Defendant,) Appellant,

versus

Ramdass Beopari, (Plaintiff,) Respondent.

THIS suit was instituted to recover Company's rupees 9-12, principal and interest of a sum lent to defendant (appellant) and his brother Ramsoonder in Kartick 1210 M.

The plaint stated that Ramdass Beopari, plaintiff, had, in Kartick 1210 M., lent to Ramkaunt and Ramsoonder 8 rupees on interest for six months; that in Jyte 1211 M., Ramsoonder died, leaving heirs, a widow under age, and his brother the defendant, Ramkaunt; further, that plaintiff had taken no written acknowledgment for the money lent.

The defendant entered no regular defence. He denied having borrowed the money of plaintiff, or that he had inherited property of his brother: he further stated that he had a quarrel with plaintiff's son-in-law, and that this complaint has been made at his instigation.

The moonsiff, considering the case proved that the amount had been lent to defendant (appellant) and his brother, and the defendant had inherited his deceased brother's property, decreed the case for 8 rupees, disallowing the interest, which was above the legal rate.

The defendant, in appeal, repeats his statement before the moonsiff, and states that he entered a regular answer to the action.

JUDGMENT.

There appears nothing in the case to allow me to doubt the propriety of the moonsiff's order. The reply said to have been filed, is a mere answer to questions put to the defendant. I dismiss the appeal.

THE 24TH APRIL 1850.

No. 675 of 1849.

Appeal from a decision of Moulvee Zeenutoollah, Moonsiff of Noaparah, dated 31st October 1849.

Fuckeerchund, (Plaintiff,) Appellant,

versus

Buzoo Manjee, (Defendant,) Respondent.

SUIT for balance of account, Company's rupees 32.

This suit was instituted on the 20th April 1849, for recovery of the above sum, balance of account.

The plaintiff stated that he lent the defendant 100 rupees to trade in dried fish, to be brought from the coast, that defendant only went one trip, and after much trouble repaid 70 rupees, leaving a balance of 30 rupees, and 2 rupees interest.

The defendant, in reply, denied any transaction of the sort, but said he was plaintiff's servant, and that the trade was on plaintiff's account and risk: that if he had borrowed the money, he would have given a tumusookh.

The moonsiff dismissed the suit, observing that it was incredible that the money should have been lent without some written document, and that the only witnesses examined speak on report.

The plaintiff appeals, charging his mooktar with fraud, in allowing his witnesses to be gained over by defendant, and complains that he gave a list of seven witnesses, of whom the moonsiff only examined two.

JUDGMENT.

It is not very credible that such a transaction as forms the subject of this suit, should have taken place without any written acknowledgment having passed between plaintiff and defendant; though the excuse that plaintiff is blind may be admitted to some extent: but in any case he is entitled to have his witnesses examined. I remand the case to the moonsiff for examination of the seven witnesses, whose names are entered in the original plaint. Decreed for appellant.

ZILLAH CUTTACK.

PRESENT: M. S. GILMORE, ESQ., JUDGE.

THE 2ND APRIL 1850.

No. 7 of 1850.

*Appeal from the decision of Shibpershaud Singh, Moonsiff of Cuttack,
dated 13th December 1849.*

Chowdry Mahadeb Das, (Defendant,) Appellant,

versus

Chowdry Narain Mahapater, (Plaintiff,) Respondent.

CLAIM, rupees 51-7, rent of 5 mauns, 3 goonths, 10 biswas of land in the chuck Kujoooreea, moquddummee mouzah Irda, talooka Gujrajpore, from 1253 to 1255, at rupees 3-5-4 per maun, total rupees 17-2-4, with costs and interest from date of suit to date of realization. Suit instituted 22nd September 1848.

The plaintiff stated that the defendant cultivated the land as a *pai ryut*, but had not paid rent for three years, and he in consequence instituted this suit against him.

The defendant denied that he cultivated the land as *pai*, and stated that talook Gujrajpore was his *zemindaree*, and that an 8 annas share of moquddummee mouzah Irda, which formed part thereof belonged to Kirpasindhoo Swain and other moquddums, who, on receiving from him the sum of rupees 15, of their own free will granted him an *istemraree pottah* for 5 mauns of land in chucks Baleegunga and Chouleah, at an annual jumra of 1 rupee, under date 15th Chyte 1251 Umlee, in conformity with which he had paid rent.

The moonsiff, mistrusting the evidence adduced by the defendant regarding the *istemraree pottah*, decreed rent in favor of the plaintiff, according to the ameen's valuation of the land, at rupees 3 per beegah, total rupees 46-4-10, with a proportionate amount of costs, with interest to date of payment; and against this decision the defendant appealed, stating that the execution of the *pottah* had been duly proved.

JUDGMENT.

As the *istemraree pottah* granted to the defendant by the former moquddums was duly established before the moonsiff by the attesting witnesses, two of whom were the brothers of the grantor of the

pottah, who countersigned it in approval of the sale; and the plaintiff adduced no evidence whatever to disprove the same, but merely all at once sued for three years' rent, at a rate which had never before been paid; I am of opinion that the pottah must be upheld, and the plaintiff's claim dismissed, and I accordingly decree the appeal, and reverse the decision of the lower court. The costs of appellant in both courts will be defrayed by the respondent.

THE 9TH APRIL 1850.

No. 17 of 1850.

Appeal from the decision of Moonshee Shibpershaud Singh, Moonsiff of Cuttack, dated 26th January 1850.

Bhugwan Parijah *alias* Das, (Plaintiff,) Appellant,

versus

Mohunt Damoodur Das and Oorjun Canoongoe, (Defendants,) Respondents.

CLAIM, rupees 240, principal and interest of a mortgage bond, dated 10th Jeit 1254 U., corresponding with the 1st May 1847. Suit instituted 25th January 1849.

The plaintiff stated that talook Nada having been advertised for sale on account of the first 8 puns of revenue for 1254 U., the defendants, to save their property, borrowed the sum of rupees 200 through him from Bhugwan (correctly written Bowanny) Singh, to whom he gave a bond for the amount; and that having given the money to the defendants they paid it into the collectorate, and the property was released from sale; and they executed the bond, bearing date the 10th Jeit 1254, and promised that when Bhugwan Singh should demand the money borrowed on their account, they would pay it, and get back the bond executed by him; and as security for their doing so, Mohunt Damoodur Das mortgaged his mutth with the lakhiraj land appertaining thereto, and Oorjun Canoongoe his house and khanahbaree land; and as Bhugwan Singh had demanded the amount of the bond from him, and the defendants had failed to pay it, it became necessary to institute the present suit against them.

Neither of the defendants replied to the plaint, although Mohunt Damoodur Das filed a vakalutnamah when served with notice of the institution of the suit. But after an order had been passed that the case should be tried *ex parte*, Oorjun Canoongoe presented a petition on the 3rd December 1849, denying having executed the tumusook, and stating he had been ill, and had only then learned that the suit had been instituted against him. And Mohunt Damoodur Das presented a petition on the 25th January 1850, in which he stated that the bond was executed by Oorjun Canoongoe and himself; but that the amount of it was payable by Oorjun Canoongoe

only, as the arrears of rent of talook Nada were due by him, and he had merely signed the bond conjointly with him at the entreaty of the plaintiff, as he had some interest in the property.

The moonsiff,—in consequence of certain erasures and alterations in the bond filed by the plaintiff, and because the witnesses thereto deposed that it as well as the bond executed by the plaintiff in favor of Bhugwan (Bowanny) Singh, were executed on the same date, and at the same time, and that they attested both bonds, which was not the case, the *latter bond* being filed in case No. 120, then pending before the moonsiff, (viz. appeal No. 19, herewith investigated;) and it was evident from the collector's roobakaree of the 14th April 1847, that talook Nada was advertised for sale on the 7th May of that year, the date of the *said bond*,—held that the bond filed by the plaintiff had been fabricated for the purpose of vitiating Bowanny Singh's claim; and he accordingly dismissed the suit, and held the plaintiff and his witnesses together with Mohunt Damoodur Das to bail, on a charge of forgery.

The plaintiff, in appeal, contended that as his witnesses had deposed to the execution of the bond by both defendants, and Mohunt Damoodur Das had admitted in his petition that he and Oorjun Das had written it, the moonsiff should have decreed his claim. He also asserted that Khoosalce Singh, son of Bowanny Singh, the plaintiff in case No. 120, above alluded to, had not denied that the bond executed by him, appellant, in favor of Bowanny Singh, was written on the same date as the one filed in the present suit; (court: if he did not deny he certainly did not admit that such was the case, and his having filed a bond of a different date was at all events tantamount to a denial;) and that he paid the amount of the bond executed by him after he instituted the present action.

JUDGMENT.

As it appears that talook Nada was advertised to be sold at the collectorate on the 7th May 1847, on account of the first 8 puns revenue of 1254 U., and the plaintiff (appellant) distinctly stated, in his petition of plaint, that he borrowed the sum of rupees 200 from Bhugwan Singh on account of the defendants, Mohunt Damoodur Das and Oorjun Canoongoe, and executed a tumusook in favor of the said Bhugwan Singh, and that he gave the money to the defendants, who paid it into the collectorate, and procured the exemption of the property from sale, and executed in his favor the tumusook filed by him, which bears date the 10th Jeit 1254 U., and the whole of the plaintiff's witnesses as well as Mohunt Damoodur Das, defendant, also stated that the money was borrowed from Bhugwan Singh to pay the arrears due from talook Nada, there is no doubt that the decision of the moonsiff dismissing the plaintiff's claim is perfectly correct; and there are strong grounds for suspecting that the tumusook filed by the plaintiff is a forgery; for the facts of the case as stated by

the plaintiff are entirely opposed to the contents of the bond, inasmuch that it is dated 14 days after the events which are alleged to have been the cause of its execution. It is, therefore, ordered, that the appeal be dismissed, and that the decision of the moonsiff be affirmed.

THE 9TH APRIL 1850.

No. 19 of 1850.

Appeal from the decision of Shibpershaud Singh, Moonsiff of Cuttack, dated 29th January 1850.

Bhugwan Parijah *alias* Das, (Defendant,) Appellant,

versus

Kooshalee Singh, son of Bowanny Singh, (Plaintiff,) Respondent.

CLAIM, rupees 210, principal, and rupees 47-8-6-6, interest, of a tumusook, dated 27th Bysack 1254 U., corresponding with the 7th May 1847. Suit instituted 26th March 1849.

The plaintiff stated that the defendant borrowed from his father, Bowanny Singh, the sum of rupees 210, on account of his client, Mohunt Damoodur Das, to pay the first 8 puns kist of the Government revenue of his khurreedah talook Nada, and executed the bond above alluded to, and his (the plaintiff's) father having died on the 28th Srabun 1254, he had instituted the present suit, as the defendant refused to pay the money though duly demanded of him.

The defendant replied that the tumusook filed by the plaintiff was a forgery; that he neither borrowed the money nor executed any bond on the date stated by the plaintiff; but, on the 10th Jeit 1254, his clients, Mohunt Damoodur Das and Oorjun Canoongoe, applied for the loan of rupees 200 from the plaintiff's father, who told him, the defendant, to execute the tumusook in *his* name, and he did so, and gave the amount to his clients to pay their rent, &c., and caused them to execute the bond filed by him in the original suit No. 38, (being appeal case No. 17,) just decided; and the plaintiff, learning that he had instituted the said suit, took from him (the defendant) the sum of rupees 242, and tore up the genuine bond executed by him.

The plaintiff filed the bond which was duly proved by the attesting witnesses, and the defendant failed to file any proofs or evidence in addition to that adduced by him in case No. 38, above alluded to, and merely asserted that the falseness of the plaintiff's claim had been established by the evidence of his witnesses, who deposed that the bond executed by him, in favor of the plaintiff, was written on the same date, and at the same time as the one executed by his clients, Mohunt Damoodur Das and Oorjun Canoongoe, in his (the defendant's) favor. And the moonsiff, having previously pronounced the testimony of those witnesses to be false, decreed the suit in favor of the plaintiff.

The defendant appeals, adhering to his former pleas.

JUDGMENT.

Although the defendant now denies that he executed the bond, for the sum of rupees 210, filed by the plaintiff, and asserts that he borrowed the sum of rupees 200 on the 10th Jeit 1254 U., from Bowanny Singh, the plaintiff's father, on account of his clients, Mohunt Damoodur Das and Oorjun Canoongoe, to enable them to pay their revenue and other debts, he distinctly stated in his arzee (filed in appeal case No. 17, just decided) instituted by him against the said Damoodur Das and Oorjun Canoongoe, that he borrowed the sum of rupees 200, on their account, from Bowanny Singh, for the purpose of paying the arrears of revenue due from talook Nada, and that they paid the same into the collectorate, and procured the release of the property from sale. And it is not only evident from the collector's roobakaree of the 14th April 1847, that the 7th of May, the date of the bond filed by the plaintiff, was the date fixed for the sale of the said estate; but the defendant has neither in this suit, nor in suit No. 38, instituted by himself, attempted to deny the fact. I therefore entertain no doubt that the bond filed by the plaintiff is the genuine one executed by the defendant, and I consider his assertion to the effect that he paid the amount of the bond executed by him, after he instituted suit No. 38 against his clients, to be entirely gratuitous and false; and it is hereby ordered, that the appeal be dismissed, and the decision of the lower court affirmed, without serving notice on the respondent.

THE 12TH APRIL 1850.

No. 18 of 1850.

Appeal from the decision of Moonshee Gureeboollah, Mdonsiff of Balasore, dated 1st February 1850.

Aintee Churn Das, Maun Gobind Das, and Bhagbut Das,
(Defendants,) Appellants,

versus

Kishorhy Mohun Taldec, (Plaintiff,) Respondent.

CLAIM, rupees 209, principal and interest of a *soudanamah tumusook*, dated 20th Auhun 1256 U., corresponding with the 3rd December 1848 A. D.

The plaintiff stated that Aintee Churn Das and his two sons, Maun Gobind and Bhagbut Das, took an advance of rupees 200 from him to purchase *dhan*, or unhusked rice, and executed the *soudanamah* under which he sued, the conditions of which were, that they were to deliver the *dhan* at his granary within one month, at the rate of 3 maunds, 20 seers, of 82 Sicca weight per rupee, and were to be allowed as remuneration rupees 4 per cent; and, if they failed in their engagement, they were to pay to the plaintiff the market value

of the dhan,—as security for which they pledged a 2 annas kismut of mouzah Sassung, with 6 mauns, 6 goonths, 4 biswas of lakhiraj land therein situated, in addition to the personal security of Pholad Das; but as he was unable to ascertain the Calcutta market price of the dhan, he was content to sue for the amount advanced with interest.

The defendants, who filed separate jowabs, all to the same effect, denied the plaintiff's claim, and stated generally that Aintee Churn Das was at Pooree from the 4th Assar 1255 to the 1st Maugh 1256 U.; and that the 2 annas kismut of mouzah Sassung had been sold to Musst. Pudma Dey and Lukmee Dassee, prior to the date of the soudanamah, and therefore could not have been mortgaged as security for the fulfilment of its conditions; and when Gungaram Aus caused it to be attached, in execution of a decree No. 216, held by him against the said Aintee Churn, he mortgaged his house to the said females, who engaged to hold themselves responsible for the amount of the decree, and the property was released; whereas, if it had at that time been mortgaged to the plaintiff, he would have filed a mozahim. They also argued that, if the claim was a just one, they would not have mortgaged 6 beegahs, 6 goonths, 4 biswas of lakhiraj land, as alleged by the plaintiff, as the whole quantity of confirmed and resumed lakhiraj, which they held in mouzah Sassung, was only 5 beegahs, 9 goonths, 3 biswas; and as it was not customary for persons lending money to take both real and personal security, as is asserted to have been done in the present instance, it was to be inferred that Pholad Das, their alleged security, who is at enmity with them, had instigated the plaintiff to prefer the suit against them.

The plaintiff replied that the falseness of the defendants' statement regarding Aintee Churn Das being at Pooree during the time alleged, was manifest from the fact of his having granted the receipt for the *itlanamah* served on him, in Gungaram Aus's decreejaree case; and if he at that time sold the 2 annas kismut of mouzah Sassung to Musst. Pudma Dey and Lukmee Dassee, his doing so could not prejudice the prior lien he had on it; and as he was not aware of the property's having been attached in that case, he could not file a mozahim derkhast. He also stated that the quantity of lakhiraj land was recorded in the *soudanamah* in conformity with the defendants' statement; and as it was not sold but merely mortgaged to him, he did not take the trouble to ascertain the exact extent of land that was in their possession.

The moonsiff held that the plaintiff's claim, and the execution of the *soudanamah* on the part of the defendants, had been duly proved; and whereas the defendants present had failed to substantiate their defence by any satisfactory evidence, Pholad Das, their surety, after filing a *vakalutnamah*, had failed to answer the plaint; and he accordingly gave a verdict for the plaintiff.

Against the above decision the defendants have appealed, repeating the pleas set forth in their answers before the lower court, and stating, in addition, that, as the plaintiff's witnesses were unable to identify the *soudanamah*, and the plaintiff had not sued according to its conditions for the Calcutta price of the dhan, his suit should either have been dismissed or nonsuited.

JUDGMENT.

Since the execution of the *soudanamah* by the defendants has been duly established by the evidence of the plaintiff's witnesses, and the assertion of Aintee Churn Das, the principal defendant, the father of the other defendants, regarding his having been at Pooree from the 4th Assar 1255 to the 1st Maugh 1256, has been shown to be false by his receipt for the *itlanamah* served on him in the decreejaree case No. 216, which is dated the 19th Bhadoon 1255, viz., two months and a half later than that on which the defendant alleges he went to Pooree, and only two months before the date of the *soudanamah*; and the defendants have not only omitted to furnish any documentary proof in support of their assertion that the 2 annas kismut of mouzah Sassung was sold prior to its mortgage to the plaintiff; but, on the contrary, two witnesses brought forward to prove the fact stated that the property was transferred "*benamee*" to Musst. Pudma Dey and Lukmee Dasee, the wives of two of the sons of Aintee Churn Das; and the fact of the sale having been merely a fictitious one, is manifest, from their having, as alleged by Aintee Churn Das, held themselves responsible for the payment of the amount of the decree held by Gungaram, against the said Aintee Churn Das, when he caused the property in question to be attached in execution; I cannot find the slightest cause for meddling with the decision of the moonsiff, which is hereby affirmed, and the appeal dismissed, without serving notice on the respondent.

THE 13TH APRIL 1850.

No. 6 of 1850.

Appeal from the decision of Tarakaunth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated 29th January, 1850.

Tuppeh Needhee Raj Geer Gossain, (Plaintiff,) Appellant,

versus

Tuppeh Needhee Kurnam Geer Gossain, and after his demise, his chelahs, Nubecn Kishore Geer, Hurry Kishen Geer, and Achoot-anund Geer, (Defendants,) Respondents.

CLAIM, Sicca rupees 600, or Company's rupees 640, the principal and interest of a dakhila, or conditional agreement, said to have been executed on the 25th Phalgun 1243 Umlee.

The plaintiff stated that, during the time Gooroo Umrut Geer was the *gudda nisheen*, or in possession of the Deogeer Mutt, his chelah, Kurnam Geer, promised to give Sicca rupees 300 for the *bundarra*, or entertainment, of the persons entitled to sit as members of the punchytes of his caste; but being unable himself to give the money, he told the plaintiff to do so, and executed the dakhila above alluded to, promising to repay the money in four months.

Kurnam Geer, defendant, acknowledged having executed a dakhila, the conditions of which were that, if his (the defendant's) gooroo did not, in the course of three months, entaintain the members of the punchyte, they were to get rupees 300 from the plaintiff and hold the *bundarra*, and he would repay the plaintiff, but his gooroo gave the *bundarra*, or entertainment, and the dakhila became cancelled.

The defendant filed a document, which he stated to be the draft of the original dakhila; and the plaintiff, stating that the dakhila had been lost, failed to file any documentary evidence: and the principal sudder ameen, holding that it was impossible to adjudicate the question in dispute, without seeing the original dakhila, or *ikrarnamah*, as it was very improbable that the persons, who witnessed it, could recollect its contents with any degree of correctness after the lapse of so many years, dismissed the claim, with costs.

Against the above decision the plaintiff has appealed, but it is unnecessary to record his reasons for so doing, as his claim is under any circumstances inadmissible.

First.—Because he has neither filed the dakhila alleged to have been executed by Kurnam Geer, nor a copy of it; and the reason assigned by him for not having done so, viz., that it was lost after he instituted the suit, is manifestly false, for it appears that the copy of the magistrate's roobakaree, which he has filed in support of his assertion, is dated the 16th October 1848, and it is consequently palpable that he wished it to be inferred the dakhila was lost within a short period of that date; but that such was not the case is pretty clear, otherwise he would have filed it when he first instituted the suit in 1842; and it is to be inferred, from his not having done so, that he never was in possession of the dakhila referred to in the plaint.

Secondly.—Because the appellant does not assert that he advanced the money for the members of the punchyte, or that any *bundarra* ever took place in execution of the conditions of the dakhila; but, on the contrary, admits that they were never entertained; and therefore he could have no title to sue for the amount of the dakhila, even were the original forthcoming.

Thirdly.—Because the dakhila is stated in the plaint to have been dated the 25th Phalgun 1243 U., viz., thirteen years (all but ten days) prior to the institution of the present suit, which is consequently barred by the statute of limitations. For although the

plaintiff previously instituted a suit in the month of June 1842, his claim was dismissed on default on the 31st January 1843, and the period of twelve years allowed for the institution of all similar claim is calculable from the date of the cause of action, and not from the date of any intermediate act performed with reference thereto, by the party claiming. It is therefore ordered, that the appeal be dismissed, and that the decision of the principal sudder ameen be affirmed, without serving notice on the respondents.

THE 15TH APRIL 1850.

No. 22 of 1850.

Appeal from the decision of Moheschunder Roy, Moonsiff of Dhumnaghur, dated 6th February 1850.

Musst. Chartoollah Dey, mother and guardian of Uppertee Sahoo, and others, (Plaintiff,) Appellant,

versus

Jugbundoo Sahoo, (Defendant,) Respondent.

CLAIM, rupees 45-3-10, the amount awarded to her under a salisnamah, dated 12th Phalgun 1256 Umlee.

The plaintiff stated that she and the defendant had a quarrel regarding their respective shares of their family property, and that, on its being referred to arbitration, the arbitrators allotted equal portions to each; and as it appeared during the enquiry into their zemindaree accounts, that the defendant had realized net profits to the amount of rupees 90-7-1, they awarded to her one-half of the same, viz. 45-3-10, but the defendant refused to pay her, and she in consequence had brought the present suit against him.

The defendant denied the claim, though he admitted that arbitrators had been appointed to adjust the quarrel between him and the plaintiff; and stated that in consequence of the delay on the part of the arbitrators in dividing their real property, he and the plaintiff, after remaining a long time in attendance on them, settled the matter between themselves, each taking half of their khiraj and lakhiraj land, with the exception of 4 beegahs of lakhiraj in mouzah Ankola, which, according to the arrangements partly effected by the arbitrators, was allotted to the defendant's share as the elder brother of the plaintiff's deceased husband, and the plaintiff executed a *laddavee*, dated 12th Jeit 1255, which was certified by the pergunnah cazee. He further stated that the *fysillah* of the arbitrators was not yet written, and the arbitrators, who had instigated the plaintiff to institute the suit against him, were awaiting the filing of his answer to write it; and, in a petition subsequently presented, he stated that the quantity of the lands and the produce of them recorded in the salisnamah, dated 12th Phalgun 1256, was erroneous.

The plaintiff replied that she did not execute the *ladavee*, and that she had intimated the same to the *cazee* and the magistrate, and likewise to the arbitrators, and that the date of the *salisnamah* was quoted by her in the plaint.

The moonsiff dismissed the plaintiff's claim, on the grounds that the *ladavee*, which had been proved by four witnesses, and had been attested by the *cazee*, was dated prior to the *salisnamah*, and it could not in consequence be supposed that the defendant wrote the *ladavee* to defraud the plaintiff of *wasilat* due to her.

JUDGMENT.

Neither the *fysillah* of the arbitrators, nor the *ladavee* alleged to have been executed by the plaintiff, can be admitted to be legal documents; and consequently no decision can be based solely on them. First, because the *ikrarnamah* executed by both parties stipulated that the decision of the arbitrators should be attested by the disputants in token of their assent to its provisions, and it appears that neither the one nor the other of them thus attested it. There, moreover, appears to have been great unnecessary delay on the part of the arbitrators in arriving at their decision; and no application was made by either party under Regulation VI. 1813, for the enforcement of their decree. Secondly, because, notwithstanding the *ladavee* is represented by its contents to have been based on the decision of the arbitrators, they had not, at the time it was certified by the *cazee*, made any allotment of the real property belonging to the parties; and the defendant disputes the correctness of the *fysillah* subsequently prepared, as relates to the quantity of land awarded to each party. It is therefore ordered, that the decision of the moonsiff, dismissing the plaintiff's claim, which is based on the *salisnamah*, or *fysillah*, be affirmed, and that the appeal be dismissed, without serving notice on the respondent. But this decision will not, under the circumstances of the case, interpose any obstacle to the plaintiff's instituting a suit *de novo*, if she thinks proper, for the share of the hereditary property of her husband inclusive of *wasilat*.

THE 16TH APRIL 1850.

No. 7 of 1850.

Appeal from the decision of Tarrakaunth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated 31st January 1850.

Mr. J. Kuller, (Defendant,) Appellant,

versus

Mr. J. D'Souza, (Plaintiff,) Respondent.

CLAIM, rupees 370-1, balance on account, for goods sold. Suit instituted 15th February 1849.

The plaintiff stated that the defendant formerly had dealings at his shop, and that he purchased wine and other articles to the value

of rupees 146-3-8, for which he held his vouchers; and that in addition to the said sum, he owed rupees 423-13-4, for wine, &c. purchased from him from the month of December 1847, to the month of September 1848, total rupees 570-1; but that he had only paid rupees 200, leaving a balance of rupees 370-1 still due.

The defendant denied the debt, and stated that the plaintiff's claim was inadmissible, because he had not specified when he bought the wine and other goods to the value of rupees 146-3-8, or on what dates, or under what vouchers he delivered the goods between the months of December 1847 and September 1848, or when he had paid the sum of rupees 200, and it was to be inferred therefrom that he held no vouchers. He likewise denied that he had any fixed or regular dealings with the plaintiff, though he occasionally purchased things from his shop for which he paid; and had he been indebted in the sum of rupees 146-3-8, to the plaintiff, he would not have sold him other goods to the amount of rupees 423-13-4, and it was to be inferred that the plaintiff was about to prepare false vouchers to establish his claim.

The principal sudder ameen held that it was fully established from the plaintiff's *khatta-bhue*, and the vouchers, and two memoranda of articles purchased, which were in the defendant's own handwriting, that he had purchased wine and other articles from the plaintiff to the amount of rupees 548-6-3, and that, as he had only paid rupees 200, the balance of rupees 348-6-3 was still due by him; but as the plaintiff had not adduced any vouchers for the remaining sum of rupees 38, he could not recover the same; and he decreed accordingly.

Against the above decision the defendant appeals, taking advantage of a mistake in the replication of the plaintiff, evidently made by the vakeel, or other person who engrossed it; it having been therein asserted that the vouchers bore no dates, whereas those filed by the plaintiff are all dated; and the defendant in consequence contends that they cannot be admitted as evidence in support of his claim.

JUDGMENT.

From the documents filed by the plaintiff, viz., his *khatta-bhue*, and the two figured memoranda, or accounts, which are in the defendant's own handwriting, furnishing a detail of the purchases made by him from the plaintiff between the 23rd May 1847 and the 15th June 1848; and the vouchers (which are likewise in the defendant's handwriting) for the articles purchased from the latter date to the 6th September 1848, there is not the slightest doubt regarding the justness of the plaintiff's claim and the falseness of the defendant's assertion that he only occasionally bought articles from the plaintiff and paid for them then and there; for in the first of the said memoranda, it is shown that, on the 2nd October 1847, the

defendant was indebted to the plaintiff rupees 234-2-8, and that on the 15th January 1848 he paid in cash rupees 85, and that a further credit of rupees 2-4 was allowed him on account of some bottles, thereby leaving the balance of rupees 146-14-8 still due; and although all this is recorded in the defendant's own handwriting, he now denies all knowledge of the debt. It is therefore ordered, that the decision of the principal sudder ameen be affirmed, and that the appeal be dismissed, without serving notice on the respondent.

THE 19TH APRIL 1850.

No. 3 of 1850.

Appeal from the decision of Moonshee Gureeboollah, Sudder Ameen of Balasore, dated 15th June 1849.

Sheeb Churn Saontra Mahapater, (one of the Defendants,)
Appellant,
versus

Oordhub Churn Das, Unoopram Mhaintee, and Puddum Lochun Mundal, (Plaintiffs,) Respondents.

CLAIM, possession on mouzah Juggernathpore, situated in talook Moobaruckpore, pergunnah Korai, with wassilat, amounting to rupees 674-11-11, and the cancelment of the proceedings of the revenue authorities, declaring the mouzah, the mouroosce moquddummee property of the defendants.

The plaintiffs stated that talook Mobaruckpore, which was formerly the property of Jugut Narain Pershad Rai Mohasoy, was sold on account of arrears of revenue in 1244 U., and purchased by Oordhub Churn Das and Unoopram Mhaintee, who duly got possession, and afterwards sold an eight annas share of the property to Puddum Lochun Mundal; and they summoned before them the karjees, putwarees, and telseeldars, some of whom attended and executed kuboolents and ikramamahs, and others, in collusion with the former zemindar, absented themselves; and that they collected the rents and granted *poutres*, or receipts, without enquiring into the jummas, or the lands held by them, knowing that the property would shortly come under settlement. And when the deputy collector commenced the settlement of the talook, Sheeb Churn Saontra Mahapater, Gobind Saontra Mahapater, and others, presented a petition, claiming mouzah Juggernathpore as their mouroosce moquddummee tenure. And the deputy collector, paying no attention to the plaintiffs' remonstrances, on the 19th December 1842 confirmed their moquddummee title, on the grounds of a kuballa alleged to have been executed in 1185 by Rugoo Pater in favor of Juggoo Parree, the ancestor of the defendants; the fact of the defendants' names being recorded as moquddums in the ruqba papers of 1208 and 1232, filed in the

canoongoe's *serishta*; a copy of a decree of the civil court, dated 9th June 1835, according to which Gobind Saontra Mahapater was put in possession of 5 annas share of *moquddumme* mouzah Juggernathpore; and that the defendants' ancestors had granted several parcels of land as *lakhiraj*. And the collector and commissioner having successively upheld the deputy collector's decision, they had instituted the present suit to procure its reversal, &c.; and they contended that as the defendants had omitted to prefer any claim to the *moquddumme*, in conformity with the proclamation issued by the Board of Commissioners on the 15th September 1804, republished in Regulation XII. 1805, and the mouzah was recorded in Gopal Pundit's papers as *paihasht*, neither the circumstance of its being entered as a *moquddumme* mouzah in the *ruqba* papers of 1208 and 1232 U., nor the fact of the defendants' ancestors having given away small parcels of land as *dan* and *khyrat*, could be admitted as proof of their claim; and although the deputy collector had upheld their false *kuballa*, the court would not do so. They also stated that in the *ruqba* papers of 1232 U., 15 mauns 23 goonths of land were recorded as the defendants' *jagir*, which showed they were not *moquddums*, &c.

Sheeb Churn Saontra Mahapater, defendant, replied that the village never was *hustabood*, and that it was the *mouroosee moquddumme* of Gobind Chunder Saontra and himself,—their grandfather, Juggoo Saontra, having purchased it in 1185 U., from the former *moquddum Rugoo Pater*; and that they held possession as *moquddums* during the Mahratta rule, and gave away small parcels of land from the *ruqba* of the village as *dan* and *khyrat* to other parties, and they always paid a fixed rent; all of which had been established to the satisfaction of the revenue authorities, who had upheld their *moquddumme* title, as well as before the civil court. He also stated that, if the *ruqba* papers of 1208 U. were inadmissible as evidence, not being signed, Gopal Pundit's papers, on which the plaintiffs laid so much stress, were in a like predicament; and the plaintiffs adduced no proof whatever to show that the mouzah ever formed part of the *hustabood* portion of their estate, before the deputy collector.

The *sudder ameen*, for the reasons detailed in his *fysillah*, to which I shall presently refer, considering it fully established that mouzah Juggernathpore formed part of the *hustabood* portion of the plaintiff's estate, decreed accordingly. And against his decision the defendant appealed, repeating the objections made before the lower court.

JUDGMENT.

The deputy collector, engaged in the settlement of talook Mobaruckpore, having, after a full investigation into the merits of the case, for the reasons detailed in his *roobakaree*, dated 19th December 1842, adjudged mouzah Juggernathpore, the property in dispute, to

be the hereditary moquddumnee tenure of the appellant and his brothers, and the collector, as well as the commissioner, having confirmed his proceedings, it was necessary that the plaintiffs (respondents), in suing to set aside the award of those officers, should have adduced the most clear and positive proof that their decision was founded on false data, and that the mouzah was part of the ryuttee, or hustabood, portion of their estate; but this, in my opinion, they have entirely failed to do. And notwithstanding the sudder ameen states that the respondents have satisfactorily established their claim, and asserts that none of the documents filed by the appellants are to be relied on, he has not assigned one sound reason for arriving at such a conclusion. To point out the defectiveness of each point of his argument, would extend this report to an unnecessary length. I shall therefore only record a few remarks in connexion with the principal documents on which the respondents' claim and the decision of the sudder ameen are founded.

First.—It is stated that in “Gopal Pundit's papers,” or the detailed statement of estates in the province of Cuttack, with their jummas, furnished by the Mahrattah amils in 1211 U., mouzah Juggernathpore is recorded as a “*paikash*” village, and that such is conclusive evidence of the correctness of the respondents' claim.

In answer thereto, it is to be observed that the said accounts are not only unauthenticated by any signature whatever, but it is well known that abuses of various kinds have been practised with respect to them, and they have in consequence only occasionally been admitted as proof, when fully and satisfactorily corroborated by other documentary evidence; whereas in the present instance no such auxiliary testimony is forthcoming. And under any circumstances no reliance should have been placed on the document purporting to be an abstract from them, which was filed by the respondents, until the original had been sent for and examined.

Secondly.—An extract copy of the register of cases decided by the deputy collector, from which it appears that 2 mauns 1 goonth of dewutter lakhiraj land belonging to the Gocoolchunder Thakoor, is recorded as being in the occupation, or *maurifut*, of Sheebchurn Saontra, the appellant, is adduced as proof of the respondents' claim. But the fact does not disprove that the mouzah is a moquddumnee tenure, for the appellant may have cultivated the land on the part of the *shewait* of the thakoor, or lakhirajdar, or he may have purchased it from the latter; and he may likewise himself have granted the land for the support of the thakoor. Therefore, to render the fact of any avail to the respondents, they should have showed that the land in question was granted by the zemindar to the appellant.

Thirdly.—It is asserted that it is proved by the copy of *rafayat jumma-wasil-bakee* accounts for the six years filed by the respondents that the appellant and his brothers paid a fluctuating jumma, and consequently that they could possess no moquddumnee title. But

it appears that the said copy of accounts, which is certified by the sudder ameen, was filed on the 11th June last, five days after the sudder ameen had sent for the *jumma-wasil-bakee* accounts for the six years commencing 1245 and ending 1250 U., from the respondents' house, and had returned them, because the jumma of the mouzah could not be ascertained therefrom; but how the original of the said copy happened to be deposited in the sudder ameen's court is not traceable. And after all, whether they are *bonâ fide* accounts or not, they only exhibit the collections made in the years 1212 and from 1218 to 1222 U., the latest date being 32 years prior to the institution of the present suit; whereas had the mouzah been *hustabood*, the respondents could have no difficulty in showing that it was so, by their accounts of the last six years: however, with the exception of the *jumma-wasil* statements above alluded to, they produced no accounts, or kubooleuts, to show that the village was *paikasht*. And it is well known that the collections from the moquddummee mouzahs were occasionally, on the default of the moquddums to pay their rent, made through the zemindars: and it is in consequence to be inferred that the respondents' claim is groundless.

Fourthly.—It is contended that—because in the collector's roobakaree, dated 2nd April 1829, held on the occasion of the appellant's father, Bhugwan Saontra, applying to be put in possession of mouzah Juggernathpore, from which he had been dispossessed by his brother, Gobind Soantra, in collusion with Sham Churn Sendh, the manager of the estate on the part of the zemindar, it is recorded that the collector, in consequence of being unable to satisfy himself what was the extent of the rights of the parties in the mouzah, ordered them to be put in possession and recorded as the parties in possession, in the putwaree's papers, without any title; and because the appellant neither filed the kuballa, dated 15th Shawul 1105 U., in conformity with which he states, his ancestor, Jaggoo Parree *alias* Saontra, purchased the moquddummee from the former moquddum Rugoo Pater, nor stated that the mouzah was his moquddummee in the case above alluded to; and he had not caused the kuballa to be registered at the commencement of the Company's Government,—it is to be inferred that the mouzah belongs to the *hustabood* portion of the estate, and that the kuballa filed before the settlement officer is a forgery. In reply to these arguments it is to be remarked that both Bhugwan Saontra and the appellant claimed a share in and right to possession on the mouzah, on the grounds that it was *their hereditary moquddummee tenure*; and the zemindar Juggutnarain Pershad Roy Mahasoy, when called on by the collector to state why he, through his manager, and Gobind Saontra, (one of the plaintiff's brothers,) had dispossessed the plaintiff, he distinctly stated in his petition or answer, filed through Hoorsee Kesh Das, that the mouzah was the moquddummee tenure

of Bhugwan Saontra and his two brothers Gobind and Beeharry Saontra, and the first named being the eldest brother, held a 6 annas share, and the other two 5 annas each, according to the award of certain respectable persons to whom their dispute had on a former occasion been referred; and that he himself as zemindar carried out the award by putting them in possession. It is further to be observed that the collector's investigation was not only a summary one, but no formal depositions were recorded, and the parties do not appear to have been called on to file their proofs. And no reliance can be placed on the answer made by Govind Saontra before the collector, as it was manifestly his object to get possession of the mouzah to the exclusion of his brothers, on any terms. Moreover, it was not necessary that the appellant, or his ancestors, should have registered the kuballa at the commencement of the Company's Government, as they never claimed to hold the mouzah as an independent property.

On consideration, therefore, of all the circumstances above detailed, and as the ruqba papers of 1208 and 1232 U., in the latter of which it is alleged 15 mauns 23 goonths of land are recorded as the *jaghir* of the appellant or his brothers, are not forthcoming, though called for, from the collectorate, (the collector reports that the papers for 1232 U. had been destroyed by white ants,) and the respondents filed no copy of them before the lower court; and they have otherwise adduced no evidence which proves that the mouzah belongs to the *hustabood* portion of their estate, or disproves the correctness of the decision of the revenue authorities, that decision must be upheld. And I consequently decree the appeal, with costs, and reverse the judgment of the lower court. The respondents failed to file any answer before this court, though duly served with notice to do so, in conformity with an order passed on the 23rd January last.

THE 22ND APRIL 1850.

• No. 26 of 1850.

*Appeal from the decision of Moheschunder Roy, Moonsiff of Dhumna-
ghur, dated 15th February 1850.*

Purmissur Mahapater, (Plaintiff,) Appellant,

versus

Chytun Churn Dutt *alias* Chytun Pershad Dutt, (Defendant,) Respondent.

CLAIM, Company's rupees 213-5-4, principal and interest of a bond for Sicca rupees 100, dated 3rd Jeit 1244 U.

The plaintiff stated that the defendant borrowed the sum of Sicca rupees 100 from him at Calcutta, and being unable to repay the principal, after liquidating the interest, executed the bond under which he sued in the name of his (the plaintiff's) uncle, Kunnye Churn Mahapater, promising to discharge it by the month of Maugh

1245; nevertheless he had failed to pay the money, though it had been duly demanded from him.

The defendant denied the charge, and contended that, as the plaintiff had omitted to state when he borrowed the money at Calcutta, and whether the document executed at the time was on stamp or plain paper, or whether any document at all was then drawn up, he should be nonsuited. He also stated that the plaintiff had neglected to mention what amount of interest he had received from him, or where it was paid; and Kunnye Churn Mahapater had for a long time transacted business independent of the plaintiff, and that he (defendant) never executed any tumusook, on account of *harbar* with the said Kunnye Churn; and that from Maugh to Bha-doon 1244, he was absent from home in the Hooghly zillah.

The moonsiff was of opinion that, notwithstanding the plaintiff's witnesses had deposed to the execution of the tumusook on the part of the defendant, their evidence could not for the following reasons be relied on: viz., it was evident from inspection of the document that the names of the witnesses, Kisub Barik and Trelochun Samul, had been added to the bond subsequently to the time when it was written, the ink with which their names were written, being totally different to that with which the names of the original three witnesses and the bond itself were written; and that had not such been the case, the plaintiff's vakeel would not have questioned the witnesses as to how many ink-stands were present at the place where the bond was written. And Bidyadlur Missur, one of the original witnesses, had deposed that there were but three persons who attested the bond, and he did not see Kissub Barik and Trelochun Samul, the other two persons whose names are now affixed to it, among those present when it was written. And he (the moonsiff) inferred therefrom, that, as of the three original witnesses, Bheekarry Lal Sein (the writer of the bond) was dead, and Lokenath Mungraj was related to the plaintiff, he (the plaintiff) supposing his testimony would not be relied on, added two other witnesses to the bond, and he in consequence dismissed the claim.

The plaintiff contended, in appeal, that as the moonsiff admitted that his witnesses had proved the execution of the bond by the defendant, he should have decreed his claim. And he stated that the reason why his vakeel questioned the witnesses regarding the number of ink-stands present when the bond was written, was that the mohafiz of the moonsiff's court had reported the dissimilarity of the inks, when the bond was filed.

JUDGMENT.

In addition to the reasons assigned by the moonsiff for distrusting the genuineness of the bond, it is not stated when or on what account the defendant borrowed the sum of Sicca rupees 100 from the plaintiff in Calcutta, or why, if the defendant borrowed the money

from the plaintiff, the bond was drawn out in the name of Kunnye Churn Mahapater, the plaintiff's uncle. Neither did the plaintiff state what amount of interest was paid by the defendant at the time it is said to have been written, although the defendant objected to his not having specified the same in the plaint. It is, moreover, recorded in the bond, in opposition to the plaintiff's statement, that the sum of rupees 100 was borrowed from Kunnye Churn Mahapater; and whereas 11 years and 9 months elapsed between the alleged execution of the bond, and the institution of the suit, there is no means of ascertaining how many years intervened between the contraction of the debt and the execution of the bond. And I further find that, out of the five witnesses, whose names are recorded in the bond, those of Bidyadhur Misser and Lokenath Mungraj, who knew perfectly well how to write, were written by the individual who wrote the bond; and although Trelochun Samul, a third witness, whose name the moonsiff inferred was subsequently affixed to the bond deposed that he himself attested the document, (but stated that he was now unable to write,) his name in the margin of the bond, is not only in a totally different handwriting to his signature, which is affixed to his deposition, (notwithstanding his alleged inability to write); but it is manifestly in the same handwriting as the name of Kissub Barik, which was likewise subsequently added to the bond. And the fifth witness, whose name is inserted in the bond, and who is alleged to have been the person who wrote it, is dead. I consequently confirm the decision of the moonsiff, and dismiss the appeal, without serving notice on the respondent.

THE 23RD APRIL 1850.

No. 30 of 1850.

Appeal from the decision of Moonshee Gureeboollah, Moonsiff of Balasore, dated 9th March 1850.

Hur Gobind Das, (Plaintiff,) Appellant,

versus

Unkoor Sahoo, (Defendant,) Respondent.

CLAIM, rupees 44-13-2, principal and interest of a tumusook, dated 19th Kartick 1250 U.

The plaintiff stated that the defendant took an advance of rupees 25, from Sheebpershaud, the plaintiff's uncle, and executed the bond, engaging to make 20,000 bricks at the rate of 3,500 per rupee, or 500 in excess of the bazaar rate, and on his failing to do so he was to refund the amount with interest. And although Sheebpershaud, and the plaintiff, after his demise, had demanded the bricks or the money, the defendant had accounted for neither the one nor the other.

The defendant acknowledged having received the advance and executed the *tumusook*, and stated that he had made 1,32,000 bricks, the account of which was taken by Deenbundoo Das, the adopted son of Sheebpershaud, and that some of them had been sold by the plaintiff to Uppertee Bearah, and the rest were in existence on the bank of the river, and that, instead of his being indebted to the plaintiff, money was due to him for the surplus quantity of bricks made.

The plaintiff replied that the bricks alluded to by the defendant were made by his uncle, and that as Deenbundoo Das had been sent adrift by Sheebpershaud for misconduct, it was to be inferred that he had colluded with the defendant and made false accounts.

The moonsiff held that it was proved in evidence that the defendant made 1,32,000 bricks, and that Sheebpershaud's adopted son, Deenbundoo Das, took account of them; and as there was no stipulation in the agreement made with the defendant, that he was to deliver the bricks at the plaintiff's house, whatever loss or injury was sustained after they were made over to Deenbundoo's charge, the plaintiff was responsible for; and he dismissed the claim.

The plaintiff urged, in appeal, that as the defendant admitted the execution of the bond, the moonsiff should have decreed his claim; and that the defendant's verbal statement regarding the delivery of the bricks should not have been received in opposition to the bond, for if the defendant had delivered the bricks he should have taken back the bond.

JUDGMENT.

The defendant acknowledges the execution of the *tumusook*, but stated that he had delivered the bricks stipulated for, together with a large quantity in excess, to Sheebpershaud's adopted son, and his witnesses corroborated his statement, and although the plaintiff alleged that the bricks on the bank of the river were his; his witnesses deposed that they were made by the defendant and other persons. I therefore see no cause to interfere with the moonsiff's decision, which is hereby confirmed, and the appeal dismissed, without serving notice on the respondent.

ZILLAH DACCA.

PRESENT: H. SWETENHAM, ESQ., JUDGE.

THE 16TH APRIL 1850.

No. 21 of 1848.

Appeal from the decision of Syed Abbass Allee, Principal Sudder Ameen of Dacca.

1, Lukheenarain Shah, 2, Sumbhoonath, and 3, Hurreekishore,
(three Defendants,) Appellants,

Three other Defendants, and four Opponents, who do not appear as
Appellants,

versus

Moonshee Gholam Russool, representative of Chunder Madub
Shah, (Plaintiff,) Respondent.

Vakeels of Appellants Nos. 1 and 2—Rasbeharee and Gour Chunder.

Vakeel of Appellant No. 3—Gholam Abbas.

*Vakeels of Respondents—Juggernath, Gholam Kasim, Luckheekant,
and Juggomohun.*

SUIT to re-assess certain portion of land, to recover rent for 1248 B. S., Sicca rupees 140, or Company's rupees 149-5-4.

The case was disposed of by the principal sudder ameen, and not by the moonsiff, because a reference was necessary to the collector under Section 30, Regulation II. 1819, portion of the land being claimed lakhiraj.

Plaintiff sued to re-assess, as auction purchaser's representative, 65 parcels of land. Defendants claimed to hold a portion lakhiraj, the remainder on fixed rent for perpetuity. The collector reported the land not registered lakhiraj. The local ameen discovered in possession of the defendants only 43 parcels out of the 65 claimed for revision of rent, the remaining 22 were not in their possession. The ameen rated defendants' tenures at per annum rupees 143-7.

The principal sudder ameen decreed to plaintiff the power to revise the rates of rents on the 43 parcels of land in possession of the defendants, and decreed rupees 129-1-6 as the amount rent at revised rates for 1248 B. S., on the grounds that defendants failed to prove their tenures lakhiraj and at mokurruree jumma.

The written pleas in appeal are of no weight, but orally the pleaders adduce in support of their claim a decision of the Sudder

Dewanny Adawlut, dated the 2nd August 1849, in special appeal, in the case of Lukheendarain Doss and others *versus* Chundermadhub Shaw, of whom the respondent in this case is representative, and others, and quote the Regulations therein cited, viz., Section 8, Regulation XLIV. 1793, and Section 30, Regulation XI. 1822. These rules and precedents quoted apply indubitably to this case. Section 26, Act I. 1845, is inapplicable. The parcels of land under consideration are in the populous city of Dacca, measured by cubits, and are not liable to enhancement of rent as ordinary culturable tenures. Zumeendars are permitted under the rules quoted to grant leases for any period, or in perpetuity for the erection of dwelling houses, gardens, &c. The title deeds under which appellants hold possession were filed in the lower court, but they have not been verified. Witnesses were named and summoned, none examined, the points at issue being viewed by the court below on other grounds.

The documents requiring verification are 1 meerass pottah of 1203, for lakhiraj land, 4 kuballas, dated 1210, 1226, 1229 and 1232, for lakhiraj lands for houses and bazars, and 2 kuballas of 1229 and 1232, for lakhiraj lands for bazars, dakhilas, &c. If the permanent hereditary building lease and the deeds of purchase of hereditary pottah lands be verified, the respondent's (plaintiff's) claim should be dismissed with costs. I reverse the principal sudder ameen's decision, and remand the case for further investigation with reference to the foregoing observations. The value of the stamp paper of appeal to be returned to appellants.

THE 18TH APRIL 1850.

No. 19 of 1848.

Appeal from the decision of the Principal Sudder Ameen of Dacca, Syed Abbass Ally.

Sumbhoonath Race and Roop Chunder Shah, (two Defendants,) Appellants,

Juggernath, Lukheendarain Shah, and Hurreenarain, Defendants, who have not appeared,

versus

Musst. Gungamohee Chowdrain, widow of Lukheendarain Ghose, and mother of Kishore Narain Ghose, minor, and Musst. Sheosoon-durec, widow of Bharut Chunder Ghose, and mother of Madhub Chunder Ghose, minor, (Plaintiffs,) Respondents.

Vakeels of Appellants—Juggomohun, Petamber, and Gour Chunder.

Vakeels of Respondents—Rammonee and Hurreekishore.

THE original suit was to reverse a sale of lands made by the collector, under directions of the court, in satisfaction of a decree of court, rupees 4,581-9- $\frac{3}{4}$.

Plaintiff Juggernath held a decree against the respondents, who agreed to discharge the amount by four instalments, viz. 1,000 rupees in Maugh 1249, rupees 750 in Assin, and 1,500 in Maugh 1250, and rupees 389-10-10 in Bhadoon 1251. The first instalment was paid: the second and third instalments of 1250, amounting with interest to rupees 2,381-8, not being paid, the decree-holder attached 3 talooqas of respondents, which the court directed the collector to sell in satisfaction. Respondents paid up rupees 1,500, for which Lukheernarain, mokhtar of Juggernath, granted a receipt, and petitioned the court to stay the sale, which was accordingly done. Subsequently Juggernath sold his decree to Lukheernarain Shah and his brother Hurreenarain, who revived the order of sale of the talooqas, the sale being notified for the 16th October 1846. Respondents sent rupees 881-8, the balance of rupees 2,381-8, after deducting 1,500 rupees paid at Dacca, by their mokhtars: the judge was holding sessions at Furreedpore, they could not pay the sum to him. They therefore petitioned the collector to receive the amount together with peadah talubanah, and to stay the sale. As, however, the representatives of the decreedar denied the payment of the rupees 1,500, the collector rejected their petition. That day the judge returned from the Furreedpore sessions, reference was made to him, the receipt was produced, and Lukheernarain, representative decreedar, acknowledged its accuracy, and agreed to deduct 1,500 rupees: including the fourth instalment and interest, there remained due to the decreedar rupees 1,889-3-10. Luckheernarain agreed, on payment of that sum, to stop the sale: that sum was accordingly paid into the court treasury. On the treasurer's report, an order was passed by the judge to prevent the sale, which order was sent to the collector's office, with an intimation that an attested copy would follow as soon as prepared. That day, the 26th October, which was notified for the sale, the sale did not take place: on the 27th, the sale was made, but before the deposit was made by the purchaser the proceeding barring the sale was received by the collector. As it was generally known the sale was prohibited, there were no bidders: thus the 1st lot worth 20,000 rupees was sold for 90 rupees, the 2nd lot worth 3,000 rupees sold for 5 rupees, the third lot worth 7,000 rupees sold for 5 rupees; the whole property valued 30,000 rupees realized but rupees 100. By summary proceedings the judge reversed the sale, but the purchasers appealed to the Sudder, which Court reversed summarily the judge's order, the 17th March 1847.

Answer.—The purchasers maintained the validity of the sale, quoting Constructions Nos. 928 and 1129, Circular Order 13th September 1843, and precedent decision of the Sudder Dewanny Adawlut, 11th July 1849, in the case of Bootae Singh *versus* Bhugwan Dutt. The representatives of the decreedar did not state the sum of rupees 2,381-8 was due, they only petitioned for revival of the order for sale. Juggernath, the original decree-holder, acknowledged his

mokhtar had received 1,500 rupees of the amount for which the sale was notified, and implied that the amount of rupees 2,381-8 was not due when the sale was effected.

Decision of the principal sudder ameen.—First. The authority who orders sale can reverse it. Clause 3, Section 3, Regulation VII. 1825, Clause 1, Section 5, Regulation VII. 1825, paragraph 6, Government orders, 15th January 1834, &c. &c. The judge reversed the sale on the 11th December 1846, on reasonable grounds assigned. The evidence of Rumzan, jummadar of the collector, and of Joomun, chupprasee of the judge, proves the judge's order barring the sale reached the collector before the sale was made. Secondly. The payment of rupees 1,500 was proved by the receipt and other documents named by the principal sudder ameen, and that sum was not deducted in the lotbundee; the sale was advertised for the 26th and made on the 27th October. Thirdly. The representatives of the decreedar received the sum of rupees 1,889-3-6, deposited by order of the judge. Fourth and fifth points allude to precedents quoted by both parties. With reference to these remarks the principal sudder ameen decreed to plaintiffs.

The purchaser defendants appealed, to effect. First. The jurisdiction is barred, the Sudder Dewanny Adawlut having reversed the judge's order annulling the sale. Secondly, the evidence of the two witnesses noticed by the principal sudder ameen, regarding the judge's order having reached the collector before the sale was effected, is contradictory and incredible. Thirdly. The sum of rupees 1,889-3-6, deposited in the court, was taken after the sale. Fourthly. The order quoted as precedent by respondents had been reversed on revision. Fifthly, Construction No. 1129 had not been noticed by the principal sudder ameen.

JUDGMENT.

In regard to jurisdiction it may be observed a summary order of the Sudder Dewanny Adawlut, reversing a summary decision, does not bar a regular suit or appeal: therefore this suit is admissible. Secondly. As the collector has reported he did not receive the order to stay the sale till after it had been made, his assertion settles the point, and the evidence of the jummadar and chupprasee is disregarded. Thirdly. It is a fact not to be disputed, and susceptible of proof by the office documents that the sum of rupees 1,889-3-6, which appellants state was taken after the sale by the representatives of the decree-holder, was deposited for the special purpose of barring the sale. To cause the sale and to draw the money deposited to bar it savours strongly of a fraudulent transaction. Fourthly. Construction No. 1129 regards mesne profits, interest, or other matter, involved in a decision, and is inapplicable to the matter at issue. Construction No. 928 is quoted by the appellants, in their answer: that Construction rules that inadequacy of price *alone* affords no ground for reversing a sale. It appears to me, however, that the orders of the court

counter-ordering the sale, and the fact of the debtor having paid into court the balance of the sum for the recovery of which the sale was ordered, as well as the fourth instalment, which had not been included in the lotbundee, afford strong presumption for considering the inadequacy of price to have been occasioned by the court's proceedings; otherwise it would seem inexplicable why the first talooka paying a jumma of 965-15-3½, was sold for rupees 90, the second talooka jumma 243-10-2, for rupees 5, the third talooka jumma 317-9-4¼, for rupees 5. The precedent of Bootae Singh *versus* Bhugwan Dutt, decided by the Sudder Dewanny Adawlut, on the 11th July 1849, might apply to the appellants' case if the sale had been in all respects regular. The debtors might have been said to have been in fault in not sooner adopting measures to stay the sale of their property; but the requirements of the law have not been fulfilled. The proclamation must by law contain particulars of the amount due for the recovery of which the sale is ordered. The proclamation made was defective in this point, which is a very, and the most, essential point; and this circumstance alone is sufficient to vitiate the sale. Therefore, though I do not concur in the grounds on which the principal sudder ameen based his judgment, I confirm his decision, and dismiss the appeal. Costs payable by the parties respectively, respondents not having been summoned although present by vakeel.

THE 19TH APRIL 1850.

No. 36 of 1849.

Appeal from the decision of Nymooddeen, Moonsiff of Lithragunge.

Sheikh Jan Mohamed, Sheikh Shadanec, and Patoo Biswas Nuthoola,
(Plaintiffs,) Appellants,

versus

Ram Ruttun Bose, (Defendant,) Respondent.

SUIT to cancel a forged agreement (kuboqleut,) rupees 12, dismissed by the moonsiff, 25th January 1849, appealed 26th February 1849. Since that date appellants have neglected to proceed in their suit. The appeal is dismissed under Act XXIX. 1841.

THE 19TH APRIL 1850.

No. 37 of 1849.

Appeal from the decision of Nymooddeen, Moonsiff of Lithragunge.

Sheikh Annoo and Sheikh Mungul, (two Plaintiffs,) Appellants,

versus

Ram Ruttun Bose, (Defendant,) Respondent.

SUIT to cancel a forged agreement, rupees 10-9-12, dismissed by the moonsiff on the 27th January 1849, appealed 26th February 1849, and from that date neglected, dismissed under Act XXIX. 1841.

THE 19TH APRIL 1850.

No. 38 of 1849.

Appeal from the decision of Nymooddeen, Moonsiff of Lithragunge.

Gopaul Paramanick, (Plaintiff,) Appellant,

versus

Ram Ruttun Bose, (Defendant,) Respondent.

SUIT to cancel a forged agreement, rupees 12, dismissed by the moonsiff on the 27th January 1849, appealed 26th February 1849, since neglected, dismissed under Act XXIX. 1841.

THE 29TH APRIL 1850.

No. 39 of 1849.

Appeal from the decision of Nymooddeen, Moonsiff of Lithragunge.

Nudeea Chand Sirdar, (Plaintiff,) Appellant,

versus

Ram Ruttun Bose, (Defendant,) Respondent.

SUIT to cancel a forged agreement, rupees 11-8, dismissed by the moonsiff on the 27th January 1849, appealed 26th February 1849, since neglected, dismissed under Act XXIX. 1841.

ZILLAH HOOGHLY.

PRESENT: F. W. RUSSELL, Esq., JUDGE.

THE 30TH APRIL 1850.

Case No. 218 of 1848.

Appeal from the decision of Muhumud Alum, the Moonsiff of Ooloberea, passed on the 15th day of May 1848.

Juddoonauth Koondoo Chowdry, Denonauth Koondoo Chowdry, and Koylaschunder Koondoo Chowdry, (Plaintiffs,) Appellants,

versus

Dood Khan *alias* Doonoo Khan or Choto Dood Khan, for self and as guardian of his minor sons and daughter, that is to say, of Chand Khan and Sadut Khan and Ruheeman Beebee, by his late wife, Goona Beebee, deceased, Koosheeda Beebee, Korbaun Khan, husband of Koosheeda Beebee, Ichecamoe Dossee, Taruckchunder Koondoo Chowdry, husband of Ichecamoe Dossee, Ennayut Ahned, for self and as guardian of Lootfunissa Beebee, minor daughter of the late Tullukhur Khan, deceased, Dhunnoo Beebee, Hubeeb Khan, husband of Dhunnoo Beebee, Armanee Beebee, daughter of the late Golaub Khan, deceased, Numdar Khan, husband of Armanee Beebee, Shaoolee Beebee, daughter of the late Musund Khan, deceased, Luhur Khan, Pahar Khan, Effautoollah Khan, Arzoo Khan, and Hoboo Khan, (Defendants,) Respondents.

CLAIM, for the reversal of an award given under Act IV. 1840, and to obtain possession of certain purchased lakhiraj, rent-free lands, with a tank and trees, including damages, laid at Company's rupees two hundred and fifty-seven, annas four; (Company's rupees 257-4.)

It appears in the plaint that of the ancestral lakhiraj, rent-free property belonging to the defendant, Koosheeda Beebee, in the village chuck Saheb Khan, within the pergunnah Arsah, she, the said defendant, did, on the 15th day of Srabun 1253 B. S., sell her share of fifteen cottahs, thirteen gundahs, one corah, and one kraunt of a garden, and one and half cottahs being a portion of a parcel of nine cottahs of a tank, on the west side of the aforesaid garden, also one cottah, ten chittacks, thirteen gundahs, one corah, and one

kraunt being a portion of a parcel of one and half beegahs including trees, in a tank called "Metahpookur," making a total of eighteen cottahs, three chittacks, six gundahs, two cowrees, and two kraunts, for the sum of rupees one hundred and five, to the plaintiffs, and having got the bills of sale registered through her husband, Korbaun Khan, gave the plaintiffs possession of the same; that the defendant Dood Khan, on the 4th of Bhadoon 1253 B. S., under the plea of having purchased, out of the aforesaid parcel of land, sixteen cottahs, eight chittacks, thirteen gundahs, one cowree, and one kraunt of land farmed by Ennayut Muhumud Khan, from the defendant Koosheeda Beebee, on the 19th of Kartick 1248 B. S. preferred a suit under Act IV. 1840, in the court of the magistrate at Howrah, under No. 168, and induced the defendant, Ichheamoe Dossee, to prefer her claim in the suit as the purchaser of the one cottah, ten chittacks, thirteen gundahs, one cowree, and one kraunt share in the tank called "Metahpookur," and obtained a decree on the 22nd day of September 1846, on the strength of which he, the defendant, Dood Khan, subsequently cut down and carried away the trees (cocoanuts and bamboos) and all the fish from the tank, and dispossessed the plaintiffs, in consequence of which they instituted this suit, including the names of the other shareholders as defendants in this case.

The defendant, Dood Khan, in his answer, states that the original ancestor, by name Noor Khan, possessed six beegahs, three cottahs, and ten chittacks of lakhiraj, rent-free land, &c., within the villages cluck Sahab Khan and Moheearree, and died leaving two sons, by name Thalebber Khan and Mathubbur Khan, and three daughters, named Koosheeda Beebee, Dhoonoo Beebee, and Goona Beebee; that the aforesaid Mathubbur Khan subsequently died unmarried; that Thalebber Khan, on the 3rd day of Kartick 1244 B. S., gave one-half of the aforesaid property to his daughter, Lootfoonissa Beebee, and the other moiety to his three sisters, by name Koosheeda Beebee, &c., under a deed of gift; that Koosheeda Beebee had sold her share of one beegah and nine chittacks of land to him, the defendant, on the 19th day of Kartick 1248 B. S., for the sum of rupees forty-eight, and Dhunoo Beebee sold her share to the above named Goona Beebee, the wife of Dood Khan, on the 31st day of Bysack 1248 B. S., for the sum of rupees forty-eight, when both of them became possessed of and got possession of the said purchased shares; that subsequently the defendant, Dood Khan, sold one cottah, thirteen chittacks, six gundahs, two cowrees, and two kraunts, being a portion of the parcel of the land he had purchased in the village Moheearree, and his wife, Goona Beebee, likewise sold three cottahs, ten chittacks, thirteen gundahs, one cowree, one kraunt, being a portion of the parcel which she, Goona Beebee, had purchased, and that which had been allotted to her share, making a total of five and a half cottahs of land, to the plaintiffs, on the 9th day of Assar 1251 B. S., for

the sum of rupees five, annas eight, under a registered bill of sale; that the land in dispute is within that which he, the defendant, had purchased; that in consequence of the plaintiffs having forcibly dispossessed him of the land, he filed a suit under Act IV. 1840, and obtained a decree, and was accordingly put again in possession; that the plaintiffs, with the view of fraudulently getting the land in question, instituted this suit on the strength of a fabricated document.

The defendants, Ennayut Muhumud Khan, Hubeeb Khan, Dhunnoo Beebee, Koosheeda Beebee, and Korbaun Khan, in their answer, support the plaint.

The defendant, Icheeamoe Dossee, in her answer, states that the defendants, Armanee Beebee, Shaoollie Beebee, Lahur Khan, Pahar Khan, Ennayut Muhumud, Lootfoonissa Beebee, Dood Khan, Chand Khan, and Sadut Khan, had sold sixteen cottahs with a "dobah" to her, Icheeamoe Dossee, on the 21st day of Phalgun 1252 B. S., for the sum of rupees forty-four, under a registered bill of sale, "kuballa;" that in the suit preferred by Dood Khan under Act IV. 1840, the plaintiffs having stated, in their answer, that they had purchased one cottah, ten chittacks, thirteen gundahs, one korah, and one kraunt, a portion of the aforesaid sixteen cottahs of land from the defendant, Koosheeda Beebee, the defendant, Icheeamoe Dossee, preferred her claim, and the suit was subsequently decreed in favor of Dood Khan.

The answer given by the defendants, Armanee Beebee, Shaoollie Beebee, Namdar Khan, and Lohur Khan, is the same as that of the defendant Icheeamoe Dossee.

The plaintiffs, in their replication, contend that Lootfoonissa Beebee was not born in the year 1244 B. S., at which time her father, Thallebbur Khan, and her uncle, Mathubbur Khan, and the mother of the last two individuals were alive; hence, under these circumstances, it is not probable that Thallebbur Khan could have given half a share to his daughter, Lootfoonissa Beebee, who was not in existence at the time.

The moonsiff states that the two "kuballas," bills of sale, filed by the plaintiffs, and alleged to have been given to them by Koosheeda Beebee, are of no value when compared with that of 1251 B. S., also filed by the plaintiffs, because it is not probable that the plaintiffs would have bought the same property twice over; that in the "*furraize*" filed by the plaintiffs, the name of Noor Khan is not mentioned, and that in her appearance Lootfoonissa Beebee does not seem to be more than eight years old, and even when compared with other girls, she does not seem to be more than eleven years of age; that if the purchase by Dood Khan had not been true, Koosheeda Beebee would certainly have opposed it; that the answer given by Armanee Beebee and others support that of the defendant Dood Khan: hence, under all these circumstances, the moonsiff, not

considering the demand of the plaintiffs to be just, and the witnesses produced by them to be worthy of credit, dismissed the case.

It is urged, in appeal, that notwithstanding their claim had been clearly established by witnesses and the "kuballas" filed by them, the moonsiff unjustly and on conjecture dismissed the case, &c.

After a most careful perusal of all the papers in this case, I consider the demand of the plaintiffs just and correct, and the decision of the moonsiff unjust and injudicious for the following reasons :

First. The defendant Dood Khan states Thallebbur Khan had divided his ancestral property in the year 1244 B. S. equally between his daughter, Lootfoonissa Beebee, and his three sisters, Koo-sheeda Beebee, Dhunnoo Beebee, and Goona Beebee, that is to say, one half to his daughter, the other moiety to his three sisters under a deed of gift, whereas it appears from the decision of the moonsiff that, on a local enquiry which he, the moonsiff, had made in person, in order to set at rest the objections raised by the plaintiffs, he, the said moonsiff, calculates the age of Lootfoonissa Beebee to be not more than eight years and five months, and thus it is clear that Lootfoonissa Beebee was not in existence in the year in which the deed of gift was executed, and the moonsiff states that in his opinion the age of Lootfoonissa Beebee, when comparing her with other girls, cannot be more than eleven years; but this opinion is merely conjecture, and in direct opposition to the result of the local enquiry; therefore it is very improbable that Koosheeda Beebee can claim a share under such a deed of sale, and that Dood Khan could have purchased the said share on the 19th day of Kartick 1248 B. S., and the bill of sale, to which Koosheeda Beebee objects, not having been registered, renders it, the bill of sale, very suspicious.

Secondly. The bill of sale, dated the 21st day of Phalgun 1252 B. S., filed by the respondent (defendant) Ichceamoe Dossee, is also invalid, because the defendant, in her answer, states Dood Khan to be the vendor, whereas the names of Lootfoonissa Beebee and others appear affixed as the vendors in the bill of sale aforesaid, and not the name of Dood Khan; further, it has been shown that Lootfoonissa Beebee is at the present time a minor; the bill of sale aforesaid must therefore be inadmissible in a court of justice; moreover, it is impossible that Chand Khan and Sadut Khan, whom the appellants declare to be minors, could sell the self acquired property of the father, Dood Khan, in Metahpookur during his lifetime, although the bill of sale of Ichceamoe has been registered, yet as the vendors, Lootfoonissa Beebee and others, appear to be minors, it is evident the registry was fraudulently obtained.

Thirdly. The statement of the moonsiff on setting aside, in reference to the kuballa of 1251 B. S., the two bills of sale, that is to say, that of 1252 B. S., and that of 1253 B. S., stating that a property cannot be twice purchased by the same individual, is

unjust, because, in the kuballa of 1251 B. S., purporting to be the sale of five and a half cottahs of land to the plaintiffs by the defendant, Dood Khan, and his wife, Goona Beebee, it is stated that Dood Khan purchased the shares of Koosheeda and Dhunnoo Beebee, and that Goona Beebee was the proprietor of her own share; whereas no allusion to the land in dispute is made in the kuballa, bearing date the year 1251 B. S., as stated in the kuballa of 1253 B. S., though it is stated in the kuballa of the year 1252 B. S. that the plaintiffs had purchased one cottah, thirteen chittacks, six gundahs, two cowrees, and two kraunts, a portion of the parcel of five and a half cottahs of land from Koosheeda Beebee, which is in no way detrimental to Dood Khan.

Fourthly. The bill of sale filed by the plaintiffs, regarding the property in dispute, has been duly registered, and which is admitted by the vendor, Koosheeda Beebee, and the authenticity of it verified by four witnesses.

Fifthly. After this appeal had been admitted, the defendant, Dood Khan, filed a copy of a bill of sale, dated the 9th day of Bysack 1253 B. S., to prove the fact of the land in dispute being in his possession; but no trace of the property in dispute is to be found in the said bill of sale; on the perusal of it, it appears that the vendors were Effayutoollah and others, who had sold their shares, amounting to five beegahs and six and a half cottahs of lakhiraj (rent-free) garden and tank to the plaintiffs, on the 9th day of Bysack 1253 B. S., for the sum of rupees seven hundred and sixty-five: under the forty-first line of the said kuballa, where the boundaries are defined, the following words appear: "*the former lakhiraj of Thallebbur Khan and at present to the east of the garden in the possession of Doonoo Khan;*" but as the plaintiffs aver that Koosheeda Beebee was the vendor of the property in dispute, it is impossible that the property alluded to in the boundary above quoted, can be that property now claimed by the plaintiffs, nor does it appear in the last kuballa that Dood Khan is the purchaser of the disputed property: hence, under all these circumstances, I decree this appeal, and reverse the decision passed by the moonsiff on the 15th day of May 1848, and I direct that the appellants be put in possession of the property in dispute.

The costs of both courts are to be paid by the defendants, Dood Khan and Icheeamoe Dossee. The respondent Dood Khan admits being in possession of the property in question under Act IV. 1840; and as there are discrepancies in the evidence of the witnesses for the appellants regarding the value and extent of damage, the appellants cannot now receive the damages claimed by them, but will, in the execution of the decree, be entitled to receive such portion of the damages as may, on enquiry, be established.

THE 30TH APRIL 1850.

Case No. 238 of 1848.

Appeal from the decision of Muhummud Yahsannul Ghunnee, the Moonsiff of Jehanabad, dated the 13th day of May 1848.

Muddun Bang Baugdee, (Defendant,) Appellant,

versus

Bhurrut Mundle, (Plaintiff,) Respondent.

CLAIM, for the recovery of the sum of rupees sixty, annas nine, gundahs ten, being the amount of certain money advanced on loan on a bond, including interest.

It appears from the papers in this case, that the defendant borrowed the sum of rupees forty-seven, annas eight, from the plaintiff, on a bond, bearing date the 9th day of Bhadoon 1249 B. S., of which sum the defendant repaid rupees thirteen, and, failing to liquidate the balance, the plaintiff sued him, the defendant, for the sum of rupees fifty-seven, annas eight, which amount includes the accruing interest.

The defendant, in his answer, denies the debt, and states that the plaintiff has instituted this suit from enmity, on the strength of a fabricated bond.

The moonsiff, considering the demand of the plaintiff to be established by the evidence of his witnesses and the bond filed by him, decreed the case to the extent of rupees sixty, annas nine, gundahs ten, which amount includes the interest for the time during which the case was pending before the court.

It is urged, in appeal, that, notwithstanding the fact of the enmity had been proved by witnesses produced by the appellant, the moonsiff unjustly decreed the case, &c.

After the admission of this appeal, the respondent filed a list, in which were the names of two witnesses, Gholamee Sirdar and Munsaram Sirdar, stating that they, that is to say, Gholamee Sirdar and Munsaram Sirdar, would prove his demand, hence it is necessary that the moonsiff should take the evidence of the two witnesses aforesaid, as well as those who have not been examined, and whose names appear written as witnesses to the bond in that document, and to re-try the case, therefore I decree this appeal, and reverse the decision passed by the moonsiff on the 30th day of May 1848, and order that the case be remanded to the moonsiff, with instructions to restore it to its original number on its file, and, having attended to the remarks recorded in this decree, to re-hear the case.

Costs to be paid for the present by each party respectively, and ultimately by the losing party.

The value of stamp upon the petition of appeal is to be refunded to the appellant.

THE 30TH APRIL 1850.

No. 261 of 1848.

Appeal from the decision of Pundit Sreeram Turkolunkar, the head Moon-siff of Hooghly, passed on the 20th day of June 1848.

Doorgachurn Dutt Talookdar, (Plaintiff,) Appellant,

*versus*Bissumbhur Koowur, Rughoonauth Koowur, and Kisto Koowur,
(Defendants,) andKallachurn Ghose and Madhubchunder Ghose, Claimants,
Respondents.

CLAIM, for the reversal of a summary award given under Regulation V. 1812, and for the arrears of rent, laid at Company's rupees one hundred and two, annas nine, gundahs nineteen, (Company's rupees 102-9-19.)

It appears from the papers in this case that in the village Amor-pore, situated within the putnee talook belonging to the plaintiff, there was a *jumma* of rupees eighty-five, annas fifteen, gundahs fifteen, in the name of the late Ramtunoo Koowur, realized through the defendants, who having fallen into arrears to the amount of rupees six, annas six, gundahs fifteen, being the balance for the year 1252 B. S., and the balance for the year 1253 B. S., including interest accruing to rupees forty-two, annas eight, gundahs seven, the plaintiff put in force the provisions of Regulation V. 1812, for the arrears of 1253 B. S., only against the defendants, who, according to the said Regulation, complained to the collector and obtained a decree; in consequence of which the plaintiff has instituted this suit for the recovery of the arrears due by the defendants, for both of the aforesaid years, that is to say, for the years 1252 and 1253 B. S., with interest, including costs of decree in the collector's court, estimated at rupees one hundred and two, annas nine, and gundahs nineteen, (Company's rupees 102-9-19.)

The defendants, in their answer, contend that the former *jumma* in the aforesaid village was held under two separate pottahs, leases, for rupees seventy-eight, annas ten, and one gundah, in all: that in 1243 B. S., a deduction of rupees two, annas eight being made from the amount on account of *chakran* land, given in remuneration for past services, the sum of rupees seventy-six, annas two, gundah one was the fixed *jumma*; that they *had* paid the whole rent for the year 1252 B. S., as well as fifty-five rupees for the year 1253 B. S., and that they had obtained receipts for the sum of forty-five rupees only; that the plaintiff, with the view to enhance the *jumma*, has instituted this suit.

The head moonsiff decreed the case on the following grounds to the extent of rupees fifty-two, annas nine, gundahs five, being a portion of the amount claimed by the plaintiff, that is to say, although it is written in the lawazimah papers, village accounts, filed by the plaintiff, that the defendants hold a jumma of rupees eighty-five, annas fifteen, gundahs fifteen, still from the decision underdate the 9th day of September 1829, filed by the defendants, it appears that their ancestor, Ramtunoo Koowur, held a jumma of Sicca rupees seventy-eight, annas ten, gundahs one, or Company's rupees eighty-three, annas thirteen, gundahs ten, and the defendants state that, out of that jumma, the talookdar allowed them a deduction of rupees two, annas eight, on account of *chakran*, or land given to defray the expense of collecting the revenue; but the defendants have not filed any documents to establish that fact, neither have they produced any witness to prove the truth of their objection, in which they declare they had not received a receipt for ten rupees out of the whole amount which, they aver, they had paid on account of rent due for the year 1253 B. S.; hence, according to the jumma stated in the abovementioned decision, the plaintiff is entitled to the sum of rupees fifty-two, annas nine, gundahs five, that is to say:—

Balance of rent for the year 1252 B. S.,	3	13	10
Balance of rent for the year 1253 B. S.,	38	13	10
Costs incurred under Regulation V. 1812,	3	8	0
On account of interest,	6	6	5
Total,.....	52	9	5

rupees fifty-two, annas nine, gundahs five.

It is urged, in appeal, that, notwithstanding the fact of the amount of the jumma declared by him has been clearly established by the lawazimah papers, village accounts, filed by him, as well as by the evidence of his witnesses, the head moonsiff has unjustly decreed only a portion of his (the plaintiff's) demand.

Both parties, being dissatisfied with the decision passed by the moonsiff, appealed against it, the defendant (respondent) under No. 258, and the plaintiff (appellant) under No. 261. The case No. 258 was remanded for re-trial to the moonsiff, that the objections urged by the respondent might be set at rest, on the 14th day of March 1850. I therefore decree this appeal, and reverse the decision passed by the moonsiff on the 20th day of June 1848, and direct that a copy of this order be forwarded to the moonsiff, with instructions to enquire into the objections offered by the appellant, and then to decide it with the other case.

Costs to be paid by each party for the present, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 30TH APRIL 1850.

Case No. 265 of 1848.

Appeal from the decision of Muhummud Yahsannul Ghunnee, the Moonsiff of Jehanabad, passed on the 26th day of June 1848.

Chundeechurn Ghose, Ramchurn Ghose, Koroonamoe Dasse,
mother of Nobeenchunder Ghose, and Treelochurn Ghose,
minors, (Plaintiffs,) Appellants,

versus

Doorgachurn Dutt, Putnee Talookdar, (Defendant,) Respondent.

CLAIM, for a release from all rent of certain land, which had previously been resigned, laid at Company's rupees twenty-six, annas ten, gundahs thirteen, (Company's rupees 26-10-13.)

The plaint sets forth that Bhoyrubchunder Ghose, late the husband of Koroonamoe Dasse, and the father of Chundeechurn Ghose and Ramchurn Ghose, held a farm of seven beegahs nineteen cottahs of every description of land, in a village called *Nosheerbattee*, at an annual rent of rupees twenty-six, annas ten, gundas thirteen, (rupees 26-10-13); that the plaintiffs paid the whole rent up to the year 1251 B. S., and obtained receipts for the said rent, and that they are not in arrears; that, owing to the aforesaid rent having been greatly enhanced, and the plaintiffs reduced in circumstances, and under the displeasure of the talookdar, the plaintiff, Chundeechurn Ghose, on the 17th day of Bysack 1252 B. S., sent up from Calcutta by post his resignation of the land in question to the talookdar; but he, Chundeechurn Ghose, having subsequently returned to his house, he, with the two other plaintiffs, gave another ishtuffa, resignation, on the 25th day of Bysack, to Kishoreemohun Sein, the manager of the talookdar, in the presence of several witnesses in order to make the matter the more public; that the manager of the talookdar endeavoured to make some other arrangement about the land, but, owing to the rate of the rent of it having been much enhanced, no person came forward to take it, and the land in consequence is lying uncultivated; that notwithstanding the talookdar was aware of the above circumstances respecting the resignation of the land, he instituted a suit for the arrears of rent under No. 290, in which (the plaintiff) Ramchurn Ghose, in his answer, alluded to the resignation of the land; and although the case was ultimately struck off the file, the talookdar instituted another suit under No. 121, for balance of rent, in consequence of which the plaintiffs have instituted this suit.

The defendant, in his answer, contends that the statement made by the plaintiffs of having paid the rent up to the year 1251 B. S., and of having obtained receipts for it, also of having resigned the land, is false, &c.

The moonsiff states that when the plaintiffs, from reduced circumstances, were unable to pay the rent of the land and tendered their resignation of the same to the talookdar and instituted this suit, as it would not have caused any loss to the talookdar to have farmed the land to other ryots, the refusal of the talookdar to accept the resignation of the land tendered by the plaintiff is an act of oppression; therefore the moonsiff decreed the case, and ordered that the plaintiffs be relieved from all responsibility, from the 14th day of Assar 1255 B. S., and that the talookdar was at liberty to farm the land to other ryots.

It is urged in the appeal that, although the fact of the resignation having been tendered in the commencement of the month of Bysack 1252, was proved by the evidence of the plaintiffs' (appellants') witnesses and the post receipts produced, the moonsiff has unjustly relieved them (the appellants) from responsibility, from the date of his decision, instead of from the date on which the resignation was tendered.

From the evidence of the three witnesses produced by the appellants, the fact of their having tendered the resignation of the land in question in the month of Bysack 1252 B. S., to the talookdar and his manager, has clearly been established. The moonsiff has relieved them, the appellants, from responsibility for rent from the date of the 14th day of Assar 1255 B. S., the date on which he passed his decision. The order of the moonsiff is manifestly unjust. The respondent has not appealed against the decision of the moonsiff, therefore he tacitly admits the statement of the appellants regarding the resignation to be correct: therefore I decree this appeal, and reverse the decision passed by the moonsiff on the 26th day of June 1848; and I order that the appellant be relieved from all responsibility for the rent of the land in question from the month of Bysack 1252 B. S.

Costs of both courts are to be paid by the respondent.

THE 30TH APRIL 1850.

^c Case No. 266 of 1848.

Appeal from the decision of Muhummud Yahsannul Gkunnee, the Moonsiff of Jehanabad, dated the 26th June 1848.

Ramchurn Ghose, (Defendant,) Appellant,

versus

Doorgachurn Dutt, (Plaintiff,) Respondent.

CLAIM, for the arrears of rent, laid at Company's rupees sixty-two, annas eleven, gundahs eighteen, (Company's rupees 62-11-18,) with interest.

It appears from the plaint that the late Bhyrub Chunder Ghose held an annual jumma of rupees 26, annas 10, gundahs 13, in lot Doyahkandha, within the village Nosheerbattee, otherwise called Goghaut, on the demise of whom, that is to say, on the demise of

Bhoynrub Chunder Ghose, his heir, Ramchurn Ghose, continued to pay the rent aforesaid; that the rent due from the year 1248 B. S. to 1252 B. S. amounted to rupees one hundred and six, annas ten, gundahs twelve, which, with the accruing interest of rupees six, annas two, gundahs two, makes a total sum of rupees one hundred and twelve, annas twelve, gundahs fourteen, of which the defendant had paid rupees sixty-eight, annas eight, gundahs fifteen, and failing to pay the balance including interest to the amount of rupees fifty-two, gundahs ten, kaugs seven, teels eight, the plaintiff filed a suit against him under No. 290, which case having been struck off the file for incorrectness, the plaintiff has instituted this suit.

The defendant, Ramchurn Ghose, in his answer, avers to having paid the whole of the rent up to the year 1251 B. S., and that he obtained receipts for the same; that, owing to the enhanced rate of the rent, he, the defendant, resigned the land in the month of Bysack 1252 B. S.; that the plaintiff, although he was made aware of the fact of the resignation of land having been tendered, instituted this suit, with a view of distressing him, the defendant.

The moonsiff states that the receipts filed by the defendant, purporting to be those for rent paid up to the year 1251 B. S., are not authenticated by the gomashita of the talookdar, whereas the la-wazima, village papers produced by the plaintiff having been authenticated by the gomashita, prove the arrears due by the defendant; and the moonsiff therefore decreed, exclusive of the sum for interest of rupees six, annas two, gundahs two, (rupees 6-2-2,) to the extent of rupees sixty-two, annas eleven, gundahs eighteen, which includes costs, &c.

It is urged in appeal that, notwithstanding the gomashitas, who had given the receipts to the appellant, were still alive, the moonsiff, without summoning them through the respondent for the purpose of distinctly proving the authenticity of those receipts, unjustly decided the case.

In order to have set at rest all objections, the moonsiff decidedly ought to have summoned the respective gomashitas (through the respondent), who had given the receipts filed by the appellant, to prove the authenticity or otherwise of the said receipts, previous to his having decided the case. The moonsiff having made this omission, his decision is not complete, and is open to dispute and cavil, therefore I decree this appeal, and reverse the decision passed by the moonsiff on the 26th day of June 1848, and order that the case be remanded to the moonsiff, with instructions to restore it to its original number on the file, and, having supplied the omission noticed in this decree, to re-try the case.

Costs to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 30TH APRIL 1850.

Case No. 250 of 1848.

Appeal from the decision of Syud Israr Ali, the late Moonsiff of Keerpoy, passed on the 15th day of June 1848.

Ramjee Fouzdar, (Plaintiff,) Appellant,

versus

Bishonauth Chuckerbuttee and Ketturmohun Chuckerbuttee,
(Defendants,) Respondents.

CLAIM, for the recovery of the sum of money, amounting to rupees one hundred and thirty-five, annas eight, being the amount of a sum of money advanced on loan on a bond including interest.

The plaintiff sets forth that the defendants had received the sum of rupees one hundred on loan from the plaintiff on a bond, dated the 27th day of Assin 1251 B. S., upon the condition that they would liquidate the whole amount by the month of Chyte 1251 B. S. The defendants having failed to fulfil the condition aforesaid, the plaintiff filed this action against them.

The defendants, in their answer, deny the debt *in toto*, and aver that on the date on the face of the bond, the defendant, Bishonauth Chuckerbuttee, was absent from his home, and was in another place; that the defendants both of them are able to read and write, and that, by comparing their handwriting with the signature affixed to the bond, the fact of the bond being a fabricated instrument will clearly be established; that in consequence of a feud between the defendants and the nephew of the plaintiff, by name Juggiswur Fouzdar, regarding some lakhiraj and bromutter land, he, Juggiswur Fouzdar, induced the institution of this suit by the plaintiff.

The moonsiff states, in his decision, that the plaintiff has produced three witnesses to prove his claim; that from their evidence, it appears that they are in the habit of giving evidence as a means of livelihood in any case in which they can obtain such employment; moreover, it appears they are under the influence of the said plaintiff; hence no dependance can be placed on their testimony; further the plaintiff declares the bond was written by the defendant, Bishonauth Chuckerbuttee, who, having personally appeared before the moonsiff, was directed to copy the bond, which he did, and the writing of which copy does not correspond with the writing in the bond; and both the signatures affixed to the bond aforesaid, evidently appear to have been written by one and the same person; it is also proved by the evidence of the witnesses for the defendants that this case has been instituted from enmity; and under these circumstances the moonsiff dismissed the case.

It is urged by the appellant that, although the facts of both the respondents having borrowed the money and signed the bond, and that Bishonauth Chuckerbuttee wrote the bond, have been clearly

proved by the three witnesses produced by him, the appellant, the moonsiff has unjustly dismissed the case, &c.

After a careful perusal of all the papers of this case, it appears that the witnesses produced by the appellant to prove his demand had been tutored, and no dependance can be placed on their testimony; and from the depositions of the witnesses for the respondent, it is proved that a feud exists between the parties. Under these circumstances, and with reference to the grounds recorded by the moonsiff, I consider his decision to be just and sound, and the appeal to be vexatious and litigious: therefore I dismiss this appeal, with costs, and confirm the decision of the moonsiff, passed on the 15th day of June 1848, and as the appeal is decidedly litigious, I fine the appellant one hundred rupees under Section 3, Regulation XIII. 1796.

THE 30TH. APRIL 1850.

Case No. 245 of 1848.

Appeal from the decision of Baboo Tarukchunder Ghose, the Moonsiff of Mahanand, passed on the 18th day of September 1847.

Sheikh Subkootoolah, (Defendant,) Appellant,

versus

Sheikh Ghuneeboolla, (Plaintiff,) Respondent.

CLAIM, for the recovery of a sum of money, amounting to rupees one hundred and thirty-six, annas fifteen, gundahs five, being the amount of a sum of money advanced on loan on a bond, including interest.

The appellant, on the 26th day of March 1850, filed a razee-namah, deed of acquiescence, and in like manner the respondent filed a saffeenamah, deed of compromise, both parties declaring that they have amicably settled the matter between themselves out of court, and that they have not any demand the one against the other, and soliciting that each party may pay their respective costs.

The case has this day been brought forward; and with reference to the two aforesaid documents, I dismiss this appeal, and order that each party respectively pay their own costs.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

ZILLAH JESSORE.

PRESENT: C. STEER, ESQ., OFFICIATING JUDGE.

THE 9TH APRIL 1850.

No. 57 of 1847.

Appeal against the decision of Moulvee Mooftee Luft Hussain Khan Bahadoor, former first Principal Sudder Ameen of Jessore, dated 18th September 1847.

Bogwan Chunder Potdar, appellant in the suit of Ramgopal Mookopadea, (Plaintiff,) Respondent,

versus

The Appellant and Mr. Lethangie, and after him, Mr. Mackenzie.

THIS suit was instituted on the 24th February 1847, to recover the sum of 730-8-4, being a claim on account of interest.

The plaintiff got a decree against Bogwan Chunder Potdar, appellant, for arrears of rent to the amount of rupees 3,500. Taking out execution of the same, the potdar entered into a bond, stipulating that he would pay the amount in specified instalments, together with the legal interest, by the end of Bhadoon 1248, and he pledged for the due fulfilment of the same, his estate of turruf Shroepore. Failing to abide by his agreement, the plaintiff caused his estate to be sold, which being done, the price realized for it was rupees 3,660. Mr. Lethangie, however, having also obtained a decree against the said Bogwan Chunder, applied to the principal sudder ameen to be allowed to share in the proceeds of the sale of the said estate; which being granted, the sum of 2,178-4 was paid to him out of the above sum. The plaintiff appealed against this order (the same having been upheld by the zillah judge) to the Sudder, by whom the order of the principal sudder ameen was reversed, and the money, paid to Mr. Lethangie, was directed to be recovered, and to be paid to the plaintiff. Mr. Lethangie accordingly being called upon so to do, deposited the sum of 2,178-4, which was duly paid to the plaintiff, who at the same time claimed the interest upon that sum from Mr. Lethangie, during the period that it was in his hands, viz., from 28th January 1843 to 18th April 1845. The principal sudder ameen, however, on the ground that the orders of the Sudder were silent as to the payment of any money as interest on the sum ordered to be refunded, rejected the claim. The plaintiff then applied that the interest

might be realized from Bogwan Chunder, which was at first complied with by the then second principal sudder ameen, and a talook belonging to Bogwan Chunder was attached for the claim. Another change having taken place in the office of principal sudder ameen, the next officer applied to the judge to review this order of his predecessor, and being allowed so to do, he declared Bogwan Chunder free from all liability, and released his estate, at the same time he recommended that he might be allowed to review the order by which Mr. Lethangie was released, which not being approved of by the judge, thus both Bogwan Chunder and Mr. Lethangie were set free. The plaintiff therefore brings this regular suit against both these parties, leaving it to the judgment of the court to award him the interest justly due to him, from whichever side may be considered liable for it.

Mr. Lethangie makes answer that, as the court awarded to him the sum on which the plaintiff now sues for interest, which he refunded on demand, he committed no wrong, whereby he can be mulcted in the present claim. He quotes Construction No. 1129, and on it claims a nonsuit.

Bogwan Chunder makes answer that, as it was no fault of his that the plaintiff was kept out of his money, it is not just to hold him responsible for the interest.

The principal sudder ameen decreed the claim against Bogwan Chunder Potdar, thinking that, as the original debt was due from him, he is the party from whom the interest ought to be levied.

JUDGMENT.

Bogwan Chunder, the appellant, cannot, in any way, be held liable for this claim. His liability to the plaintiff ceased when the court realized the full amount of the decree against him by the sale of his talook. It was no fault of his that any part of the proceeds were paid to Mr. Lethangie. The lower court has erred, therefore, in decreeing this claim against him, and I reverse that decision, and at the same time declare Mr. James Thompson Mackenzie, successor to Mr. Lethangie, answerable to the respondent for the interest claimed in this suit. He held the principal in his hands from the 28th January 1843 to the 18th April 1845, and as he enjoyed the use of it, he suffers no wrong or hardship in being called upon to pay the interest of it. True, he also held a decree against Bogwan Chunder, appellant, and was really entitled to such a sum as the court gave him, but he had no title to any of the proceeds of the sale of Shreepore, which estate had been pledged to the respondent. To Mr. Lethangie, (now Mr. Mackenzie,) therefore he has a right to look for the interest for his money during the time that it was in Mr. Lethangie's hands; and I award it to him accordingly, with interest on the principal sum claimed, from date of institution of this suit up to the date of this decision, and further interest on this sum until date of payment.

Bogwan Chunder being released from all liability as to costs, each party, I think, under all the circumstances, should pay its own, and so I decree it.

Mr. Lethangie's plea, founded on the Construction quoted, might be a good argument for Bogwan Chunder, but is none for Mr. Lethangie.

THE 12TH APRIL 1850.

No. 58 of 1847.

Appeal against the decision of Moostee Lutf Hussein Khan Bahadoor, former first Principal Sudder Ameen of Jessore, dated the 16th September 1847.

Meer Alli Ashruff, (Plaintiff,) Appellant,

versus

Aradhunnee Dossea, Mahdub Ram Sircar, Fukeer Chand, Prannath Bose, Taramonee Dossea, and Messrs. Hunter and Co., (Defendants,) Respondents.

THIS suit was instituted on the 30th December 1844, to recover possession, in virtue of a perpetual lease of a 5 annas portion of Puddum Dao and seven other kismuts, with mesne profits. Suit valued at rupees 484-13-6.

The plaint sets forth that Ram Hurree Sircar, the ancestor of Shishteethur Sircar, the husband of Aradhunnee, obtained a mouroosee grant of the property in dispute in 1196, from Rajah Ramkishen Roy. The mouroosee was held jointly by the said Ram Hurree and Seeromunnee Sircar, the former being owner of 10 annas, and the latter of 6. The share of Ram Hurree devolved, after his demise, to Mahdub Ram, defendant, and Juggurnath, father of Fukeer Chand, defendant, who held between them 5 out of the 10 annas, and to Shishteethur, who held the other 5. On the death of Shishteethur, his wife, Aradhunnee, succeeded to his share; but not being able to look after the property, and being pressed by debt, she, on the 29th Jait 1251, gave to the plaintiff a perpetual lease of the same. He had scarcely got possession, when Prannath Bose, defendant, alleging a prior lease from Aradhunnee, instituted an Act IV. case before the joint magistrate of Pubna. Fukeer Chand also claimed the property for himself; and his fellow sharer, Mahdub Ram, alleging that Aradhunnee had no right or interest in it, and Taramonee also preferred a separate claim to it for herself. The case was disposed of by the joint magistrate declaring, on the 2nd October 1844, in favor of Fukeer Chand, and Mahdub, who on the strength of that order immediately dispossessed the plaintiff.

Fukeer Chand makes answer, that his father Juggurnath, his uncle Mahdub Ram, and Shishteethur Sircar, were in joint possession of the 10 annas of the property under dispute. Shishteethur

having given his wife, Aradhunnee, permission to adopt a son, died. And his widow, in 1223, accordingly adopted as her son, one Jainarain, who, in 1238, died without issue, leaving a widow, Taramonee, defendant. Such being the state of the case, the defendant contends that he and Mahdub succeed to the share of Shisheedhur, neither Aradhunnee nor Taramonie having any right or title to it under the Hindoo law, but only to maintenance.

Mahdub Ram supports this statement of Fukeer Chand.

Meer Alli Ashruff, in his reply, denies that Aradhunnee adopted Jainarain, or that she or Taramonee are supported by Fukeer Chand. He adds, that in a former case, which was tried before the moonsiff of Commercolly, there was no mention made of the adoption.

Aradhunnee, in her answer, supports the statement of Meer Alli and denies having given any pottah to Prannath Bose.

Taramonee makes answer that Aradhunnee did adopt Jainarain, who was her husband, and to whose rights and possession she, Taramonee, as his widow, has succeeded.

The principal sudder ameen thinks that the court cannot support the plaintiff's title, for, from the oral evidence adduced by Taramonee, the adoption of her husband Jainarain, by Aradhunnee, is satisfactorily proved, and also that Jainarain was in possession of the 5 annas of the property in dispute. The principal sudder ameen called for the bywastah of the pundit on the question of succession, and as it appeared therefrom that, by Hindoo law, Taramonee succeeds to the rights of her husband, he dismissed the claim of the plaintiff as untenable.

JUDGMENT.

Thus, the mere oral evidence of six witnesses, relating to a matter which occurred upwards of 30 years ago, unsupported by a single document, either in direct proof, or as corroborative or even indicative of the alleged adoption, is pronounced sufficient proof to decree away the right and inheritance of the widow. If evidence of this sort is to establish a right in the eye of the law, then who is safe in his possessions? There being not a particle of evidence of the adoption except the oral testimony of the said witnesses, I consider it altogether insufficient as proof of the alleged fact, and I accordingly reverse the decision of the lower court, and, regarding Aradhunnee's right as clear and incontrovertible to make what arrangement she likes with respect to her property, which, there is ample proof, was in her possession at the time the present dispute arose, I decree the claim of the plaintiff, in virtue of his pottah from Aradhunnee, with costs against Mahdub Ram, Fukeer Chand, Prannath, and Taramonee, the other two defendants being released.

THE 12TH APRIL 1850.

No. 60 of 1847.

Aradhunnee, Defendant, Appellant, in the suit of Meer Alli Ashruff,
(Plaintiff,)

versus

The Appellant, Mahdub Ram, Fukeer Chand, Prannath Bose, Taramonee, Defendant, and Messrs. Hunter and Co.

THIS is a second appeal from the decision of the principal sudder ameen, in the case recorded in No. 58, this day decided. The order of the lower court in that case having been reversed in respect to the claim of Meer Alli Ashruff, who has been declared entitled to possession of the property under dispute in virtue of the lease held by him from Aradhunnee, the appellant in this case, it is only necessary to say that the adverse order of the lower court, in respect to the claims of Aradhunnee, is reversed, and this appeal decreed, with costs against Fukeer Chand, Mahdub Ram, Prannath Bose, and Taramonee, Meer Alli Ashruff and Messrs. Hunter and Co. being released.

THE 12TH APRIL 1850.

No. 62 of 1847.

Appeal against the decision of Moulvee Mooftee Lutf Hussain Khan Bahadur, former first Principal Sudder Ameen of Jessore, dated the 29th November 1847.

Kishto Chunder Chuckerbuttee, (Defendant,) Appellant,

versus

Mr. T. J. Kenny, (Plaintiff,) Respondent.

THIS suit was instituted on the 8th December 1846, to recover the sum of rupees 3,507-10-10, arrears of rent of 1253.

The plaintiff, who holds under the collector a farm of 6 annas 8 gundahs of pergunnah Mahmudshaie, the property of the minor rajah, Judoo Bosun Deb Roy, sues the defendant, who is der-izardar of the two dhces of Ishakhata and Kandra for the balance of rent due off the same to the end of Kartick 1253, amounting to rupees 3,507-10-10.

Defendant denies that there is so large a sum due, and states that the kists payable by him up to Kartick 1253, amounted to 5,600 rupees, of which he, on various dates, paid 5,199 rupees, and holds plaintiff's receipts for the same.

The principal sudder ameen examined the plaintiff in person regarding the alleged payments. He denied, on oath, that he ever

wrote or signed or gave 3, out of the 5, receipts filed by the defendant, and as the truth of this statement was corroborated by the plaintiff's receipt book, the principal sudder ameen gave him a decree for the balance of rent claimed by him.

JUDGMENT

Having examined the receipts filed by the defendant, I am of opinion that the 3, which the respondent denied, were properly rejected by the lower court as evidently not in the handwriting of the plaintiff. The decree of the principal sudder ameen is, therefore, affirmed, and this appeal dismissed, with costs.

THE 22ND APRIL 1850.

No. 3 of 1848.

Appeal against the decision of Raie Loknath Bose Bahadoor, late second Principal Sudder Ameen of Jessore, dated 21st December 1847.

Jugbundo Mitter and others, (Plaintiffs,) Appellants,

versus

Syud Kurramut Alli, Mutwullee of the trust estate, Kaleenath Chatterjee, pattadar, and others, (Defendants,) Respondents.

THIS suit was instituted on the 25th August 1848, to recover possession of a julkur mehal, with wasilat and interest during time of dispossession, by the reversal of an award under Act IV. 1840, and by cancelling a pottah granted to Kaleenath. Suit valued at rupees 1,261-14-1½.

The plaintiffs state that they held the said julkur jumma together with a jote jumma, both in Goulpara, prior to the time of the decennial settlement, the jumma on the julkur being 6 rupees, and that on the jote 364 rupees. The latter passed out of the hands of the plaintiffs, in consequence of their default, having been sold to liquidate the arrears due from it. The julkur, however, continued in the possession of the plaintiffs, till 1842, when Mr. Smith, the deputy collector in charge of the trust estate, (within which the julkur lies,) without giving any previous notice to the plaintiffs, as he was bound to do under Sections 5 and 6, Regulation IV. 1793, concluded a settlement of the said julkur with Kaleenath, defendant, on a jumma of 35 rupees, on the plea that the same was unsettled.

On Kaleenath preparing to take possession, the plaintiffs instituted an Act IV. case against him before the magistrate, but, failing in their suit, Kaleenath effectually dispossessed them on the 18th October 1842. The plaintiffs then petitioned the collector for redress, and on a report being called for, and submitted by Mr. Smith, the superintendent of the trust estate, the settlement made with Kaleenath was revoked, and the engagement made with him was transferred to the plaintiffs. On Kaleenath appealing to the commissioner, the collector's order was by him reversed on the 2nd December

1844, and Kaleenath was restored to the settlement. The plaintiffs, therefore, sue to reverse the awards by which they have been dispossessed, and to recover possession of the julkur according to the terms of the engagement made with them on the 27th September 1844, being the same as those on which Kaleenath now holds.

Syud Kurramut Alli answers, that the suit is undervalued; that the julkur never was in the possession of the plaintiffs; that in 1225, a pottah of it was given to Sheebam Manjhe and others by the collector, as manager of the trust estate; that in 1228 one Ameer Chand obtained the putnee of the pergunnah of Myhasurpassah, in which the julkur is included, and that the rent of the same was paid by him during the time he held the pergunnah; and that when it was taken back from him, the jumma devolved to the estate and was held for some years khass; at length, the deputy collector in charge issued advertisements, inviting offers for the farm of the julkur, which was settled with Kaleenath, his bid being the highest; that of this advertisement the plaintiffs must have been well aware, as Jugbundoo's (plaintiff's) son was one of the parties who petitioned for the settlement of the julkur.

Kaleenath supports this statement.

The principal sudder ameen states, in his decision, that the objection of under-valuation was not proved by the defendant, and therefore fell to the ground. After which he proceeds to consider the title of the plaintiffs to the julkur, and in a judgment, measuring 23 feet long, a fourth of which is occupied in aspersing the motives of the former deputy collector of the trust estate, and a great portion of the remainder in most unimportant minutiae, he declares that the plaintiffs have failed to establish any right whatever, and so dismisses their suit.

JUDGMENT.

The two grounds, viz., possession prior to the Dewanny and possession on the fixed jumma of 6 rupees, were both equally untenable, and as such were wisely abandoned by the plaintiffs, as appears from their suing to obtain the transfer to themselves of the settlement made with Kaleenath. Their title to this they ground on previous possession and actual occupation of the julkur at the time of its resumption by the zemindar. These two points have, I think, been sufficiently established; nor can they be controverted by what the lower court has most improperly resorted to, namely, by insinuating that the deputy collector, in charge of the trust estate, had been corruptedly biassed in making a false report in favor of the plaintiffs. That the plaintiffs were in possession, is, as I said above, sufficiently proved, and that also in a way which the presiding officer in the lower court could not have been ignorant of. I allude to a case decided by *him* between Kaleenath (the same as in this suit) *versus* Budun Chunder Mitter and others, which was given by him against Kaleenath.

The only other point for consideration is, were the plaintiffs aware of the intention of the deputy collector to make a settlement of the property in dispute? and if so, did they appear and offer to engage, and if not, why did they not do so? As to the alleged ignorance that is a pretence: it is not possible that the plaintiffs were ignorant, indeed it is very plain that they, though not in their own persons, made application for the settlement. It appears, however, that the settlement was disposed of in the manner of an auction; bids or written tenders were received; one party bidding 10 rupees one day; then some other party something more another day, and so on, till the bid of the defendant Kaleenath reached 35 rupees, when, without any prior intimation, the business was closed, and the settlement concluded with him. Now as it was impossible for the plaintiffs to know when, and at what stage, the biddings thus conducted, would be closed, they might without any fault of their own have lost the settlement. It was incumbent on the deputy collector to let parties (and the plaintiffs especially) know that tenders would be open to a certain date, on which the settlement would be concluded with the party whose bid then was the highest. Had this been the way in which the settlement was disposed of, the plaintiffs would have lost their right without a hope of redemption; but as it is, their title has not, I think, been injured by the proceedings under consideration.

Regarding, therefore, the right of the plaintiffs to the settlement, on the ground of their prior and actual possession, and that they were ousted by no legal process, as points established, and considering, for the reasons above detailed, that their claim is unaffected by the proceedings which gave the settlement to Kaleenath, I decree the appeal in their favor, in reversal of the orders of the lower court. The plaintiffs are accordingly entitled to demand the transfer to themselves of the settlement made with Kaleenath, and to recover costs and wasilat as laid in their suit, from Syud Kurramut Alli and Kaleenath Chatterjee, respondents.

‘THE 22ND APRIL 1850.

No. 11 of 1848.

Appeal against the decision of Moulvee Mooftee Lutf Hussein Khan Bahadoor, former first Principal Sudder Ameen of Jessore, dated 29th March 1848.

Chunder Pershad Khoond and Neamut Mundle, Appellants in the
suit of Setul Chunder Ghose, (Plaintiffs,) Respondents,

versus

The Appellants, Bataie Biswas, Abeer Biswas and others,
Defendants.

THIS suit was instituted on the 15th December 1845, to recover possession of a jote jumma, with wasilat and interest. Suit laid at rupees 2,661-12-3.

The plaintiff's statement is to the effect that his father, Gour Chunder Ghose, held a jote jumma of rupees 61-7-6, in mouzah Morootea, pergunnah Sajeal; from which the principal defendant, Chunder Pershad Khoond, who got a mouroosee of the village, dispossessed him in the beginning of 1242 B. S.

Neamut, Bataie, and Abeer make answer that the plaintiff's father was only a part owner of the jote of which his son now claims the whole; that the father and his four brothers voluntarily relinquished the jote in 1238, and fled from the village of Morootea; since which time the defendants have occupied the jote in question, having obtained a pottah of the same from the mourooseedar, Chunder Pershad Khoond.

Chunder Pershad Khoond supports their statement.

The principal sudder ameen, considering that the plaintiff had made out his case, decreed the suit in his favor, deducting the wasilat, which he considered forfeited on account of the long delay made by the plaintiff in bringing his suit: and being of the same opinion, and also that the appellants have failed to show any ground whereby the decree can be impugned, I uphold it. The appellants will pay the costs of this appeal, which is dismissed.

THE 25TH APRIL 1850.

No. 12 of 1848.

Appeal against the decision of Moulvee Mooftee Lutf Hussein Khan Bahadoor, former first Principal Sudder Ameen of Jessore, dated the 5th April 1848.

Mr. Durand, Appellant in the suit of Nobboo Kishun Lahoree, and others, (Plaintiffs,) Respondents,

versus

The Appellant, Hurris Chunder Dhur, and Ruttun Munnee Dibbea, wife of Sheeb Chunder Lahoree, deceased, and others, Defendants.

THE plaintiffs sued the defendants for possession of a jote in Kooprea Mangundangah, &c., within the putnee tenure of the first defendant, Mr. Durand, the jumma of which they alleged to be rupees 243-4-3.

Hurris Chunder made answer that he held the lease of a jote in the said villages belonging to Ruttun Munnee, the jumma of which was rupees 452-10-5, and that to this jote jumma the plaintiffs had nothing to say.

Mr. Durand supported this statement, and added that he held a kubooleut from Ruttun Munnee for a jote, the rent of which was rupees 452-10-5.

Ruttun Munnee denied having given either the lease or kubooleut.

The principal sudder ameen gave the case in favor of the plaintiffs, decreeing the right in the jote jumma to them, and awarded possession with wasilat at the jumma stated by them, viz., rupees 240-4-3. This decree was affirmed by a former judge on the 13th May 1845. Hurris Chunder, defendant, preferred a special appeal to the Sudder, on the ground that no evidence was taken as to the amount of the plaintiff's jumma, on which the Sudder Court, on the 6th July 1847, (present, Mr. Tucker,) recorded as follows: "I find that the decree of the principal sudder ameen records that the jumma pleaded by the defendants, viz., rupees 452-10-5, was not proved: at the same time there is no mention of that pleaded by the plaintiffs having been proved. This is of importance both to the petitioner and also to the zemindar (query, putneedar?) who was also a defendant in the suit. Consequently I admit the special appeal, and, annulling the decisions of both the lower courts, remand the proceedings to the principal sudder ameen, who will take evidence on behalf of the plaintiffs, and then dispose of the question of wasilat."

The case, having been returned to the principal sudder ameen, was again disposed of by him on the 5th April 1848. He records in his decree that the right of the plaintiffs to a jote jumma in the villages named, of rupees 240-4-3, is established by clear and irrefutable documents, which jote he accordingly decrees to them, charging Mr. Durand and Hurris Chunder jointly with the costs of the plaintiffs and of Ruttun Munnee, and declaring them also liable for wasilat, leaving, however, the amount, and in what proportion payable by each party, for future adjustment.

Against this decision Mr. Durand, the putneedar, appeals. His grounds of dissatisfaction are four; first, against the jumma; second, against his being charged with any part of the wasilat; and third and fourth, against his being saddled with the costs of the plaintiffs and with those also of the defendant, Ruttun Munnee.

JUDGMENT.

No appeal having been preferred against the original order of the principal sudder ameen as to the costs of Ruttun Munnee, the lower court had no business to make any alteration of the original decree in this particular. That part of the decree is, therefore, amended, and Ruttun Munnee will pay her own costs.

The same observation applies in regard to the award of the costs of the plaintiffs. They were originally decreed against Mr. Durand and Hurris Chunder equally. No appeal having been preferred in regard to this matter, the award originally made should have been allowed to stand. The decree of the lower court is, therefore, amended, and the costs of the plaintiffs are chargeable in *equal portions* to Mr. Durand and Hurris Chunder. These remarks dispose of the third and fourth grounds of dissatisfaction.

In respect to the second ground of appeal, against the payment of wasilat, the lower court has very properly held Mr. Durand liable. He is the chief mover in the affair by which the plaintiffs were dispossessed, and Hurris Chunder is plainly only a tool in his hands.

In regard to the only remaining ground of appeal, that of the amount of the plaintiffs' jumma, I am quite of opinion with the lower court that the jumma of the plaintiffs was rupees 240-4-3. The decree, therefore, which awards them possession and wasilat is very proper; but the latter should have been disposed of at once instead of being left for future adjustment. Any further enquiry with a view to fix the amount is superfluous, and would only needlessly delay the termination of this dispute. There was and is sufficient data before the court to enable it to decide the amount of wasilat, without fear of inflicting any injury on the parties concerned.

Hurris Chunder, in his answer, said, that the rent of the jote, as held by him in lease from Ruttun Munnee, was 621 rupees. Now taking this to be the sum of the yearly assets of the jote, (but of course they were more,) the plaintiffs would be entitled to 121 rupees per annum more than they have laid claim to as profits. Mr. Durand supported this statement of Hurris Chunder, and gave it further corroboration by saying that Ruttun Munnee had agreed to the yearly rent of rupees 452 for the jote. The wasilat claimed being, therefore, less than what the mesne profits may certainly be assumed at from the defendants' own showing, the lower court ought to have declared at once that the plaintiffs were entitled to wasilat at the rate laid in their plaint. This error I now amend, and the orders of this court are: first, that the decree of the lower court, awarding the plaintiffs' possession of their jote, be upheld; secondly, that Mr. Durand and Hurris Chunder be jointly and individually responsible for the wasilat at the sum claimed by the plaintiffs, namely, at 260 rupees per annum, from the date of dispossession to the date of decree in their favor by the lower court, with interest on the wasilat for the same period, and interest again on the entire sum, including the costs, from date of decree to date of payment; thirdly, that the costs be borne by Mr. Durand and Hurris Chunder equally; fourthly, that Ruttun Munnee pay her own costs; and fifthly, that Mr. Durand pay the costs of his appeal.

THE 26TH APRIL 1850.

No. 13 of 1848.

Appeal against the decision of Moulvee Mooftee Lutf Hussein Khan Bahadoor, former first Principal Sudder Ameen of Jessore, dated 25th April 1848.

Chunder Persaud Khoond, Appellant in the suit of Ramguttee Acharje, (Plaintiff,) Respondent,

versus

The Appellant and Surroop Chunder Ghose, Defendants.

THIS suit was instituted on the 28th August 1847, to recover the amount of an instalment bond, dated Assin 2nd, 1247 B. S.

The plaint sets forth that the defendants had money transactions with the plaintiff, and that on a settlement of accounts there appeared a balance of 460 rupees due to him, for the payment of which the defendants bound themselves in a joint bond. On this the plaintiff now sues.

Chunder Persaud, in his answer, denies the bond, and avers that he has no knowledge of such a person as Surroop Chunder, and he pleads that the suit is brought at the instigation, and to gratify the revenge of a third party, with whom he is on bad terms.

Surroop Chunder did not appear.

The principal sudder ameen, being satisfied from the evidence adduced by the plaintiff, and from the inspection of his accounts that the claim was just, and that the bond was executed by the defendants, decreed the suit in favor of the plaintiff. And being of opinion from a perusal of the bond that the justness of this decision cannot be impugned, I confirm it, dismissing this appeal, with costs.

THE 26TH APRIL 1850.

No. 15 of 1848.

Appeal against the decision of Moulvee Mooftee Lutf Hussein Khan Bahadoor, former first Principal Sudder Ameen of Jessore, dated 5th May 1848.

Ramkomar Das, Appellant in the suit of Sunkoree Dibbea, (Plaintiff,) Respondent,

versus

The Appellant, Petumber, and others, Defendants.

THIS suit was instituted on the 15th February 1847, to recover the sum of rupees 523-12, on account of wasilat and interest on the same.

The plaint sets forth that the plaintiff was dispossessed by the defendants, or their ancestors, in 1819, from certain lands appertaining to her gatee jumma, in the village of Bajoodunga. She brought

an action to recover possession, in the zillah court, on the 6th August 1830, which suit was given in her favor on the 24th February 1836, permission being at the same time allowed her to sue for the wasilat if she so desired. It was not, however, till the 8th March 1838, that the plaintiff was restored to her lands; and she now sues to recover so much of the mesne profits during dispossession, as the lateness of her suit will allow, under the law of limitations.

The following statement will more clearly show the particulars of her claim:

Wasilat from the 15th July 1835,					
(12 years exactly from the date					
of the institution of this suit,) to					
8th March 1838, when plain-					
tiff was restored to possession,	Rs.	261	14	0	
Interest on the wasilat from 15th					
July 1836 to 15th July 1847,		344	13	0	
Minus the sum in excess of the					
principal of the wasilat,		82	15	0	
	Rs.	261	14	0	

Total claim on account of wasilat, 523 12 0

Ramkomar and Petumber make answer that the plaintiff has no right to a fraction of wasilat; that, if her claim to it had been good, it would have been awarded to her when she got a decree for possession; that the heirs of certain defendants in the original suit having improperly been excluded as defendants in the present suit, renders the plaintiff liable to a nonsuit; that plaintiff has made an error of calculation as to time, calling the period of her dispossession 2 years, 8 months, 4 days, instead of 2 years, 7 months, 26 days; and that she has made no allowance in her account of mesne profits for the labor and cost of cultivation during the time.

The other defendants did not appear.

The principal sudder ameen records in his decision that he sees no bar to the plaintiff's suit, on account of the heirs of certain parties, who were sued before, not being included as defendants in this suit; for by the answer of Ramkomar in the present suit, and by the answer of his father in the former one, the lands from which the plaintiff was ousted were in the sole possession of Ramkomar during that time; and it would have been enough, therefore, if he only had been sued in the present action. On this ground, he considers Ramkomar alone liable for the wasilat claimed, which he assesses at rupees 203, giving a decree against Ramkomar for that amount, and disallowing altogether the plaintiff's claim of interest, because of the delay in bringing her suit.

JUDGMENT.

I have nothing to object in this decision, except that the wasilat is somewhat excessive. The lower court has allowed as the yearly

produce of certain date trees 4 annas each. Now the most productive plants do not rent in any part of this district for more than 2 annas each per annum. Beyond this the plaintiff has no title, and I therefore cut down the sum on this account to this scale. The plaintiff is accordingly entitled to rupees 122-10-8 as wasilat, and she will recover costs in proportion to this sum in modification of the orders of the lower court.

Failing to perceive any other just ground of appeal, the decision of the lower court is in all other respects confirmed.

The costs of this appeal will be paid by the appellant.

THE 27TH APRIL 1850.

No. 16 of 1848.

Appeal against the decision of Raie Loknath Bose Bahadoor, former second Principal Sudder Ameen of Jessore, dated 25th May 1848.

Abadullah Mundle, (Defendant,) Appellant,

versus

Ishurchunder Roy, putnee talookdar, (Plaintiff,) Respondent.

THIS suit was instituted on the 27th September 1847, to fix the defendant's jumma, as now assessed at the current rates of the pergunnah.

A suit, having a similar object, was, on a former occasion, disposed of by the zillah court, which threw out the claim of the plaintiff to an enhanced assessment. The Sudder, in special appeal, reversed this order in a judgment which concludes thus:—"I find that the plaintiff, though entitled to assess the lands in possession of the defendant at pergunnah rates, has not pursued the course prescribed in Section 9, Regulation V. 1812, and consequently, under the following Section 10, no greater rent is exigible by process of distress or confinement of person, nor recoverable by suit in court, than the defendant was bound to pay under his previous engagement. I therefore admit the special appeal, on the ground of the judge's decision being contrary to law as regards the rights and privileges of the plaintiff, and direct that the proceedings be returned to the judge, who, with reference to the preceding remarks, will dispose of the case *de novo*."

Upon this the judge nonsuited the plaintiff, who, having since corrected the error on account of which his former suit miscarried, now revives his claim to an enhanced assessment, in conformity, as he alleges, to the present pergunnah rates.

The only points now at issue between the parties, are as to the mode of assessment and the amount of it. The assessment is as follows :

Land and trees.		Rate per beegah or per each tree.		Jumma in Sa. Rs.		
<i>Rice lands.</i>						
beegahs.	cottahs.					
486	15½.....	at 1 rupee 4 annas per beegah,...		608	7 6	
<i>Site of Houses.</i>						
beegahs.	cottahs.					
9	13	at 1 rupee 14 annas ditto, ...		18	1 10	
<i>Tobacco land.</i>						
beegahs.	cottahs.					
7	13¾.....	at 2 rupees 8 annas ditto, ...		19	3 10	

Total jumma on the land, 645 12

Total, 504-2, minus the quantity occupied by trees.

Occupying beegahs.	Mangoe trees,...	154, at 2 annas each,	19	4	0
	Jack trees,.....	51, at 4 annas ditto,	12	12	0
	Betelnut trees, 165,	at 3 pie ditto,	2	9	5
	Cocoanut trees, 82,	at 4 annas ditto,	20	8	0
	Date trees,.....	1660, at 6 pie ditto,	51	14	0
	Palm trees, ...	87, at 1 anna ditto,	5	7	0
	Tamarind tree, 21,	at 3 annas ditto,	3	15	0
	Bamboo clumps, 58,	at 4 annas ditto,	14	8	0

Jumma on the trees, 130 13

Total jumma, 776 9 10

The defendant objects to this mode of calculating the assessment, and pleads that it is not customary to assess trees, and also that the rates on the houses and on the rice and tobacco lands are too high.

The principal sudder ameen gave the plaintiff a decree, on the persuasion that the mode of assessment adopted by him, of taxing the trees instead of the land on which they stand, was the custom of the pergunnah. An ameen deputed for the purpose reported that the assessment made by the plaintiff was correct and just, and the lower court thereon decreed the claim of the plaintiff in full.

JUDGMENT.

The assessment cannot be maintained. It has not been shown that it is the custom of the pergunnah to assess trees, allowing only a small deduction out of the land for the space occupied by the roots. Such a system is nowhere recognized in the laws. It is opposed to the spirit of every regulation which bears on the subject of assessment, and is a violation of every principle of right and equity.

The plaintiff may have contrived, and so may his predecessors, to introduce their mode of assessment in some particular instances; but stray cases of this sort cannot be regarded as establishing a custom. Nay, the defendant has cited a multiplicity of cases, in which, though the lands were partly occupied by trees, such a mode of assessment as that contended for by the plaintiff was never resorted to. In all these instances land occupied by trees was called garden land, and as such assessed at a fair rate.

The laws nowhere recognize such a mode of assessment. Every Regulation in which mention is made of the subject of assessment, for instance Regulation VIII. 1793, Regulation IV. 1794, and Regulation V. 1812, one and all indicate, most plainly, how that assessment is to be regulated, viz., by reference to the description and quality of the land. If the produce of the land is to be recognized as the basis of assessment, a zemindar might claim the right of altering a ryut's rents on every mutation of crop. The recognition of such a vicious principle would assuredly subvert the tenure of every ryut in the district, would subject them to perpetual annoyance and exactions, and would rob them of the profits of their industry, for the benefit of those who had no right to be so enriched.

The question raised in this case is not of greater importance to the interests of the cultivators, than it is vitally so, to the prosperity of this district and the interests of commerce. If the legitimate mode is to be set aside, and the assessment of the produce is to be considered legal, its ill effect on the date cultivation, now so greatly on the increase in this district, will be incalculably mischievous. This desirable manner of occupying lands will be discouraged, and a measure, which promises to reduce the cost of sugar, will assuredly only raise the price of it. Thus trade is indirectly taxed. It is the interest of the zemindars to encourage as much as possible this species of cultivation; date trees will grow any where, even on the poorest soil, where other crops will not thrive; and there is every prospect that, in time, all the waste and bad lands in the district will be taken up for this cultivation. But the zemindars are so short-sighted that they prefer a certain present gain to any prospective advantage; and as to the interest and welfare of their tenants, that seldom enters into their calculation.

But to return to the point at issue. I have shown that the principle, observed by the plaintiff, is neither sanctioned by custom or by the laws, that it is opposed to the spirit of the regulations, is oppressive and unjust towards the ryuts, is highly objectionable, as discouraging the extension of a useful and remunerative species of cultivation, and that it indirectly, but surely, operates as a tax on trade. I cannot therefore consider that such an assessment ought to be upheld. Let the plaintiff then follow the rule of his neighbours in the assessment of land occupied by trees, and the court will support him. As it is, he has tried to introduce an innovation; and I

consider it right that his claim should be utterly rejected. I accordingly reverse the orders of the lower court, and decree this appeal, with costs against the respondent.

This order is not, however, to be regarded as any restriction upon the respondent in re-assessing the lands of the plaintiff at the per-gunnah rates, in the customary and legal manner.

THE 29TH APRIL 1850.

No. 17 of 1848.

Appeal against the decision of Raie Loknath Bose Bahadoor, former second Principal Sudder Ameen of Jessore, dated 12th June 1848.

Asseemuddeen Sirdar, Appellant in the suit of Satcowree,
(Plaintiff,) Respondent,

versus

The Appellant, Kasseem Sirdar and others, Defendants.

THIS suit was instituted on the 21st February 1848, to obtain possession of a gatee jumma, with wasilat.

The plaintiff states that in Gadgachee village, within a daoter mehal, one Soorjanarain Bukshee held a gatee jumma of rupees 18-2-2, in the name of Ramkomar; that jumma, being sold for arrears of rent due to the zemindar, was purchased by the plaintiff, but the defendant, under the plea of being the dur-gateedar, refuses to quit the jumma; and the plaintiff therefore brings this suit to oust him, and obtain possession of his purchase.

Asseemuddeen makes answer that the gatee jumma in Ramkomar's name was composed of two jummas, a 10 rupees one, and a 19 rupees; the latter alone was purchased by the plaintiff; that he (defendant) holds, in right of purchase, the dur-gatee of both these jummas, and is not liable to be ousted by the plaintiff, who, as a purchaser under a decree only, succeeds to the rights of the late incumbent. The defendant urges, besides, various pleas with a view to show, either that the plaintiff's suit is barred; or that he ought to be nonsuited.

The principal sudder ameen, having overruled the several pleas urged by the defendant, in bar of the plaintiff's suit, states that the only question left for decision is, whether a purchaser of a gatee jumma, sold for its own arrears, can legally oust from his tenure a party who claims to hold a dur-gatee, under a deed from the late incumbent. Now a gatee jumma, the principal sudder ameen considers to be a tenure which, though not a talook, has all the essential properties of one; and he therefore holds that whatever privileges a purchaser of a talook acquires in respect to the power of cancelling under-tenures, those a purchaser of a gatee may also legally exercise; and therefore the dur-gatee claimed by the defendants is liable to be cancelled. He accordingly decrees the suit in favor of the

plaintiff, with wasilat; and observes that as to the attempt of the defendant to make out that the plaintiff only purchased part of the late gateedar's jumma, it was utterly futile; for be the jumma, comprised in the gatee, one or more jummas, they were one and all sold, and now belong to the plaintiff in right of his purchase.

JUDGMENT.

The case has, I consider, been rightly viewed by the lower court, and its decision is consonant to law. A gatee jumma being a saleable talook, as it unquestionably is, a purchaser of such a talook, or tenure, is not to be regarded as the representative only of the rights and interests of the former incumbent, but as Clause 7, Section 15, Regulation VII. 1799, declares, he becomes the owner of the tenure. The lien, which the defendant had as dur-gateedar, ceased when his superior was sold out; and now both must give place to the new incumbent, who has a right to take possession of his purchase, free from all incumbrances that may have accrued upon it by the act of the defaulting proprietor, as in the case of a purchaser of a putnee, as stated in Clause 1, Section 11, Regulation VIII. 1819, or other saleable talook.

The decree of the lower court is, therefore, confirmed, and this appeal dismissed, with costs.

ZILLAH MIDNAPORE.

PRESENT: W. LUKE, ESQ., JUDGE.

THE 1ST APRIL 1850.

No. 150 of 1849.

Appeal from a decision of the Moonsiff of Midnapore, Gunga Gobind Surbadhicarry, dated 15th May 1849.

Narain Doss, (Plaintiff,) Appellant,

versus

Juggernath Doss, (Defendant,) Respondent.

THIS is an action for a bond debt, laid at rupees 60-11. The bond bears date 1st Bysack 1253, to be redeemed in Assin 1254 Umlce.

The defendant denies.

The moonsiff rejects the claim, not being satisfied with the evidence. He observes that the plaint and replication are at variance. In one, it is stated that defendant borrowed the money through one Goburdhun to pay a mohajun; in the other, that it was to pay Goburdhun himself. The evidence of the witnesses is also contradictory as to the parties to whom plaintiff paid the money, and at variance with plaintiff's statement.

In appeal, the plaintiff urges nothing to induce me to differ with the lower court. There is no evidence whatever to support the claim, but the testimony of the attesting witnesses (ignorant and illiterate persons) which is full of contradictions and improbabilities, and altogether unworthy of belief. It is a doubtful point whether, according to the terms of the bond, a suit could lie in the form in which it has been brought. It is unnecessary, however, to discuss it here, as the claim is not otherwise substantiated. The appeal is dismissed, with costs, and the moonsiff's decision affirmed.

THE 1ST APRIL 1850.

• No. 156 of 1849.

Appeal from a decision of the Moonsiff of Midnapore, Gunga Gobind Surbadhicarry, dated 29th May 1849.

Anundram Pal, (Defendant,) Appellant,

versus

Soobulchurn Pathur, (Plaintiff,) Respondent.

THIS is an action for a bond debt, laid at Company's rupees 23-9-7. The bond bears date the 20th Bhadro 1252 Umlee, and by its terms the loan was to have been repaid in cash on 15th Kartick 1253, or, in failure thereof, dhan was to be given in lieu at the rate prevailing in the market at Jhar gram.

The defendant denies the claim, and pleads that the suit has originated in enmity.

The moonsiff rejects the evidence offered by defendant, and, deeming plaintiff's proofs in support of his claim satisfactory, gives a verdict for the latter.

The moonsiff has omitted altogether to notice defendant's first plea, viz., that the petition of plaint is opposed to the terms of the bond. According to the latter, after the 15th Kartick 1253, the plaintiff could not claim the money, but its value in kind according to the rate prevailing at the time in Jhar gram, and this should have been his ground of action in the present suit. The defendants are entitled, in the opinion of this court, to a nonsuit, and a verdict is given accordingly, and appeal decreed, with costs.

Admitting the plaint to have been formal, the moonsiff's enquiry was incomplete. A doubt existing in reference to one of the witnesses inserted in the list filed by parties to the suit, is no reason for refusing to summon the other witnesses and receive their evidence.

THE 1ST APRIL 1850.

No. 161 of 1849.

Appeal from a decision of the Moonsiff of Kaseegunge, Khyrat Hossein, dated 4th June 1849.

Gunga Hurree Poorekut and others, (Defendants,) Appellants,

versus

Puteet Pabun Ghose, (Plaintiff,) Respondent.

THIS is an action for a bond debt, laid at rupees 27-3-11. The defendants deny all knowledge of the debt, and of the party who sues them; that the suit has originated with Becharam Mundul and others, who reside in the same village, and with whom they are at enmity.

The moonsiff overrules all the pleas offered by the defendant, and, placing reliance on the evidence of the attesting witnesses, deems the bond valid, and decrees accordingly.

In appeal, the defendants reiterate what they pleaded in the lower court, and take objection to the reasons the moonsiff gives for his decision. The moonsiff does not appear to have well weighed the probabilities in this case, which are, in my judgment, strongly against the truth of plaintiff's claim.

In the first place, the plaintiff does not reside in the same village as the defendants, and the defendants themselves have no connexion with each other beyond the circumstance of the defendant Mohun carrying on his trade in the house of defendant Gunga Hurree. There is, therefore, no apparent motive, and none is given in the bond, why they should jointly borrow money from a party previously unknown to them, and residing at a distance from their village. Again, the stamp paper, on which the deed is engrossed, is endorsed to a third party on a date long prior to that of the deed itself. The inference is that, if there had been a *bonâ fide* transaction of the nature stated, the defendants would, as is usual in similar cases, have provided the stamp paper, and purchased it when it was required, and in their names. There is no collateral proof in support of the bond, no books or accounts of any kind, which should be forthcoming, as the lender represents himself to be a banker, and would therefore have, or ought to have, some record of his business transactions. Lastly, the evidence of the attesting witnesses is improbable and quite beyond belief. Defendants' plea that the suit is a fictitious one and brought to serve a malicious end, is borne out by the explanation of the zemindar of the defendants' village, who was called on to state the circumstances under which the defendants had laid a complaint before him. If his statement is to be believed, the motive that prompted this suit is clear, and confirms the defendants' story, and I see no reason to reject it.

For these reasons, I reverse the decision of the lower court, and decree the appeal, with costs.

THE 1ST APRIL 1850.

No. 184 of 1849.

Appeal from a decision of the Moonsiff of Nema, Mr. Snell, dated 21st June 1849.

Narain Mytee, (Defendant,) Appellant,

versus

Râdakisto, (Plaintiff,) Respondent.

PLAINTIFF sues to recover 8 cottahs of land, including a tank, trees, &c., and compensation for loss consequent on dispossession, laid at rupees 30-8. He deposes that, in the year 1250 Umlee, he was

forcibly ousted of the property above stated, and the latter made over on a lease to the appellant, Narain Mytee.

The defendants plead that the land in dispute was formerly in possession of the plaintiff, but that, in 1249 Umlee, becoming a defaulter, he resigned his lease, and gave the malik defendant a deed of relinquishment.

The moonsiff rejects the istafa as unworthy of credit.

The appellant urges that the plaintiff was a defaulter, and as such he voluntarily relinquished his lease. The question is not whether plaintiff was or was not a defaulter. If plaintiff was in balance, the defendant malik had his remedy had he chosen to avail himself of it. The point for adjudication is whether the deed of relinquishment is a *bonâ fide* document or not? The probabilities are that it is not. The istafa is written on a stamp of two annas, which is superfluous and unnecessary, and it is endorsed to a third party, having no connexion whatever with the present suit. The evidence of the attesting witnesses is contradictory and unworthy of credit, and I therefore see no reason to disturb the decision of the lower court, which is hereby affirmed, and the appeal dismissed, with costs.

THE 8TH APRIL 1850.

No. 165 of 1849.

Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 7th June 1849.

Ram Chunder Suringee and others, (Defendants,) Appellants,

versus

Gour Mohun Gossein, (Plaintiff,) Respondent.

THIS is an action for possession of land with mesne profits, laid at rupees 602-14-5-3.

The case is thus recorded by the lower court:

“ Plaintiff alleges that Bhurut Chorou Lotputtee’s zemindarry was sold for Government arrears in 1250 B. S., and bought by him in his son-in-law’s name, and that in mouzah Arrooah, which forms part and parcel of the said purchase, defendants Ram Chunder Suringee and others have 25 beegahs 10 cottahs mâl land, for which they refuse to pay rent: hence this action.

Defendants demur to this action on two grounds—first, until plaintiff obtains due authority from the recorded purchasers, he has no right of action; secondly, the aforesaid land is part of the 30 beegahs 14 cottahs lakhiraj under sunnud 11943, and therefore not liable for rent. Defendants’ first objection is not valid, because a tenant cannot impugn his landlord’s title; therefore, their second objection is the issue to be now decided; that is, whether their land is liable to be assessed or not. From the collector’s report that defendants hold 30 beegahs 14 cottahs lakhiraj land

under the sunnud aforesaid, but a local investigation was necessary to discover if the land claimed by plaintiff was part of the said sunnudee land or not, therefore an ameen was deputed by this court to make the necessary enquiry.

The defendant, Ram Chunder, objects to the measurement, urging that the proper rod was not used, and prays that the collectorate measuring rod may be employed. We have refused his prayer: first, because his mooktear signed the document, acknowledging the rod used by the ameen to be correct and in general use in the pergunnah; secondly, by a late precedent of the Sudder Court the rod in general use in the pergunnah is to be employed on such occasions as the present. Since then it appears that the ameen was duly sworn to the correctness of his report at the time of delivery, we receive it as evidence. By it we find that Ram Chunder aforesaid has 24 beegahs, 18 cottahs, 3 in excess of the lakhiraj tenure aforesaid. We decree that the said 24 beegahs, 18 cottahs, 3 is liable for assessment, and give costs of suit. The costs of those defendants released by plaintiff will be paid by him."

In appeal, the defendants reiterate the pleas urged in the lower court. They take exception to the ameen's enquiry and to the rod used, and pray that a fresh measurement be made with the rod in use as described by the kanoongoe's papers in the collector's office. On a careful consideration of the objection raised to the proceedings of the lower court, I can find no reason to differ in opinion with it. Every facility has been afforded, the defendants to establish their plea that they are in possession of no more lakhiraj than they are entitled to by their sunnud. Two ameens have been deputed to the spot, they have both measured the disputed lands with rods of the dimensions according to the testimony of village authorities prevailing in the pergunnah and with similar results. The lands were measured in the presence of the defendants' mooktear, who signified his approval of the ameen's proceedings by affixing his signature to his report, and that report, though impugned by appellants, must be assumed, in the absence of proof to the contrary, to be correct. There can be no question, I think, that the appellants are in possession of 24-18-3 of land in excess of that described in their document; and to comply with their prayer would be of little or no advantage to them, and would only vexatiously protract the decisions of the case. Admitting even their statement to be true as regards the size of the rods, the trifling difference between that used on the present occasion, and that represented by appellants as really existing in the pergunnah, would not account for the quantity of land it is shown they have in excess of what they have any just title to. The appeal is dismissed, with costs, and the decision of the lower court affirmed.

THE 8TH APRIL 1850.

No. 171 of 1849.

Appeal from a decision of the Moonsiff of Pertaubpore, Goolam Soobhan, dated 28th June 1849.

Persaud Sahoo and others, (Defendants,) Appellants,

versus

Dwarkanath Bhooyah, (Plaintiff,) Respondent.

THE plaintiff sues for a bond debt, laid at rupees 148-6.

Defendants deny the claim, and plead that the suit has originated in a dispute, and is brought to serve malicious ends.

The moonsiff deems it unnecessary to enquire into defendants' pleas, or to summon his witnesses, as the plaintiff's claim is clearly established by the evidence of the witnesses attesting the bond, who are respectable parties, and whose word there is no reason to doubt, and, considering that plaintiff has met all the requirements prescribed in Regulation III. 1793, Section 15, gives a verdict for the plaintiff accordingly.

The four witnesses, whom the moonsiff pronounces respectable and trustworthy, have, according to the evidence recorded in the case, committed perjury. *Two* swear they were present at the plaintiff's house at Hurreekistopore, when the money specified in the bond was given to the defendants, and *two* swear that they witnessed the payment of the said money to the defendants, at the cutcherry in the village of Patoonda. These two places, according to the same witnesses, being half a mile apart. One or other of these two statements must be false. It appears also from the same evidence that the loan was granted by Rajmohun, in behalf of the plaintiff, who was not present. Rajmohun was never summoned at all, though his name is mentioned in the list of witnesses filed by plaintiff to be cited in support of his claim. The moonsiff records as a reason for the omission that his evidence did not affect the issue of the case, and that accordingly his presence was not necessary, overruling thereby the earnest request of the defendants, who moved the court by a petition on the 25th June, (three days before the case was finally decided,) praying that Rajmohun and Heeroo Rana, the party in whose name the stamp paper on which the bond is drafted was endorsed, might be summoned,—their testimony being absolutely requisite in order to arrive at the truth of the case. According to the evidence as now recorded, Rajmohun was the granter of the loan, and not the plaintiff, as stated in the bond. The terms of the bond are therefore at variance on this point with the evidence, which discrepancy Rajmohun's statement might have reconciled, but which the moonsiff thinks altogether unnecessary and superfluous. The opinion expressed by the moonsiff that his verdict for the plaintiff is warranted by Regulation III. 1793, Section 15, because two or

more witnesses certified the bond, is an erroneous interpretation of the law, and opposed to common sense. *Two* credible witnesses and not less are certainly essential to prove a bond, and the proof must be such as to satisfy the court. The evidence of four witnesses examined is conflicting, contradictory, and unworthy of credit for causes I have above stated; and how the moonsiff could have pronounced it credible and satisfactory, and such as the law requires, is beyond the comprehension of this court. I consider the decision in this case disgraceful to the moonsiff, and calculated to bring the court over which he presides into disrepute. The appeal is decreed, with costs, and the moonsiff's decision reversed.

THE 8TH APRIL 1850.

No. 177 of 1849.

Appeal from a decision of the Moonsiff of Anundpore, Omeshchunder Mookerjee, dated 14th June 1849.

Sheikh Burhamoollah, (Plaintiff,) Appellant,

versus

Damoodur Khamrooe, (Defendant,) Respondent.

Syudoonnissa *alias* Sudnoo Beebee, third party.

THIS is an action for balance of rent, laid at Company's rupees 8-14-16-2. The plaintiff in this case is the party referred to in case No. 178, to whom Damoodur Khamrooe declared he had paid his rent. In the present suit the defendant confesses judgment, and the third party, the plaintiff in case No. 178, pleads that she is in possession of the lands for the rent of which plaintiff sues in right of her husband, in whose favor they were released from assessment by the Government.

The moonsiff observes that the plaintiff is unable to give any proof that the defendant is his tenant, or of his liability to him for rent. The kuballa, or deed of transfer, which plaintiff files in support of his title to the lands, cannot be matter for enquiry in a suit like the present. He further observes that the solanamah is collusive, and executed with a view to defraud the third party of their rights, and dismisses the claim.

In appeal, the plaintiff urges that the award of the lower court is opposed to the law, inasmuch as plaintiff was entitled to a decree against the party confessing judgment, and that the solanamah obviated the necessity of proof that defendant was in balance.

Plaintiff's title to sue for the rent is questionable; and until he establishes it in the usual way, his claim on the tenant, though admitted by the latter, is not valid. It (the title) is grounded on a deed of transfer, which is disputed by those in possession of the lands. A collusive admission of liability by the defendant, if recognized by the court, would prejudice the rights of the third party,

who, as stated in case No. 178, has clearly proved her right to the rent for which the plaintiff in this case sues. The moonsiff, though he states in one place that the kuballa cannot be subject of inquiry, pronounces an opinion on its validity. In this he was wrong, as he was not competent, under the circumstances, to pass judgment on the point.

The appeal is dismissed, with costs, and the moonsiff's decision affirmed.

THE 8TH APRIL 1850.

No. 178 of 1849.

Appeal from a decision of the Moonsiff of Anundpore, Oomeshchunder Mookerjee, dated 14th June 1849.

Damoodur Khamrooe, (Defendant,) Appellant,

versus

Syudoonnissa *alias* Sudnoo Beebec, (Plaintiff,) Respondent.

THIS is an action for a balance of rent from 1253 to 1255 Umlee, laid at rupees 12-13-12.

The plaintiff represents that her late husband was proprietor of 414 beegahs of lakhiraj land. This land was resumed by Government, but portions were subsequently released as being under 50 beegahs, amongst others the lands in the village of Amritpore. The defendant holds a lease of 1 beegah 18 cottahs in the said village, at an annual rental of rupees 3-9. Since the release of the lands, the defendant has paid his rents for two years, viz., 1251 and 1252. In failure of his paying any rent for the three subsequent years, viz., 1253, 1254, and 1255 Umlee, the plaintiff now sues to recover.

The defendant denies his liability, and that he cultivates any lands, the property of the plaintiff: he pleads that the lands he holds belong to one Burkunoollah, who acquired them by private transfer.

The moonsiff overrules defendant's pleas as to the transfer of the lands to Burkunoollah, and observes that is clear from the resumption officer's roobukaree that the lands of Amritpore were released from assessment in favor of Sheikh Beechoo, whose wife is the present plaintiff, and that the accounts of the estate, when under khass management, show that the present defendant cultivated 1 beegah 18 cottahs, on which the rent now sued for has accrued. He further observes that plaintiff's tehsildar declares the defendant to be a defaulter to the extent stated, and, in the absence of all proof to the contrary, gives a verdict for the plaintiff.

In appeal, the defendant urges that the fact of his being in balance is not proved. The plaintiff, however, has clearly proved her title to rent. Defendant does not take exception to the amount of the balance in the lower court; but merely denies plaintiff's possession.

It is clear from the documentary evidence that he (defendant) has colluded with Burkunoollah, who is at issue with the plaintiff, with a view to deprive plaintiff of her proprietary rights. I see no reason to disturb the decision of the lower court, which is affirmed, and the appeal dismissed, with costs.

THE 9TH APRIL 1850.

No. 183 of 1849.

Appeal from a decision of A. Davidson, Esq., Principal Sudder Ameen, dated 29th June 1849.

Abool Fuzzul, (Plaintiff,) Appellant,

versus

Ram Lochun and another, (Defendants,) Respondents.

THIS is an action for reparation for damage done to character by assault and battery, and for loss of time and liberty by false imprisonment, laid at rupees 1,500.

The principal sudder ameen records his judgment as follows :

“The assault and battery, as we have already said, is fully established. We have nothing to do with it now, and the only point for consideration is whether plaintiff’s character or reputation has received any injury either professionally or socially from the afore-said circumstance. No loss or injury has been attempted to be shown, and therefore there are no grounds for awarding damages. Had plaintiff come to this court in the first instance, then indeed we should have been disposed to have given suitable damages. He has made his election, and defendants have been punished ; therefore, under the circumstances, we think they cannot be punished twice for the same offence, particularly as, in our opinion, plaintiff has brought the greatest stain on his character by advancing a false claim against defendants (*vide* No. 23 of 1848) decided this day, therefore we dismiss this action, with costs.”

From this award plaintiff appeals. It appears that there are two points involved in this suit, which are totally distinct and separate, viz., the assault and battery, which must be received in a public light as a breach of the peace, and therefore indictable as a misdemeanor. Another, an injury to the person, subjecting the wrong doer to a civil action. It is, I believe, an axiom that the object of *civil law* is to restore to an injured party his right, if possible, or an equivalent, and of *criminal law*, the prevention and punishment of public wrongs. The Mahomedan law also declares that in cases of assault where retaliation is not incurred, compensation may be given. It does not, therefore, follow, as argued by the principal sudder ameen, that because defendants have been punished in the criminal court, an action for damages is barred. The wrong doer in the present case has been punished for a breach of the peace in the crimi-

nal court; but that is no equivalent, or compensation for the injury plaintiff has sustained; and I cannot concur with the lower court that the fact of the assault and battery and false imprisonment having been proved, has nothing to do with the issue of the present case. If the assault and battery and false imprisonment are proved, and there cannot be a doubt that they are, the trespass on the personal rights of the plaintiff (by injury to his, plaintiff's, reputation, and loss of time and liberty) by defendant must be proved also; and if so, then plaintiff is entitled to compensation.

The point next for consideration is, the amount of damages to which plaintiff is entitled. They must be regulated in some degree by the position which plaintiff holds in society in regard to his profession and social character. The defendants do not impugn the latter, and the fact of his being a vakeel in this court is a voucher of the respectability of the former. The fact of plaintiff having failed to prove his claim on a point of identity in the case No. 23 of 1848, as quoted by the principal sudder ameen, is no evidence, as the officer pronounces it to be, of its *falsity*, and it should not, therefore, prejudice plaintiff's claim in the present instance.

With reference to the circumstances in life of the defendant the damages as laid by plaintiff are excessive. Having due regard, however, to precedents of the Sudder Court in like cases the plaintiff will be fully compensated for the injury he has sustained by one-tenth (viz., 150 rupees,) of the amount above specified. A verdict is given accordingly against the defendant, Ram Lochun, for that amount, with whole proportionate costs, and the judgment of the lower court set aside.

THE 9TH APRIL 1850.

No. 184 of 1849.

Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 29th June 1849.

Abool Fuzzul, (Plaintiff,) Appellant,

versus

Ram Lochun Dutt and another, (Defendants,) Respondents.

THIS is an action to recover value of certain title deeds, snatched from the person of the plaintiff by the defendants at the time they committed an assault and battery on him. The principal sudder ameen is not satisfied with the evidence as to the identity of the documents, that the papers snatched from the person of the plaintiff were *bonâ fide* of the nature described by the plaintiff, and dismisses the suit accordingly.

In appeal, the plaintiff takes exception to the principal sudder ameen's reasons for rejecting the evidence. On a review of the proceedings, I concur with the lower court in thinking that plaintiff

fails to prove that the documents taken from his person by the defendant Ram Lochun are identical with those he describes. From the magistrate's decision in the assault and battery case, there can be no doubt that deeds and documents of some kind or other were forcibly taken from plaintiff by Ram Lochun, and that his father, the other defendant, acquiesced in his son's proceedings by the receiving from him into his own keeping the said documents at the time the breach of the peace was taking place. This, and suit No. 183, appear to be rather the result of defendant's oppressive and illegal acts than the gratification of revenge on the part of the plaintiff. The latter was unjustifiably attacked and deprived of his property and his liberty, and there is nothing apparent in the proceedings that, in seeking redress for his wrongs, he has been influenced by malicious motives.

The appeal is dismissed, each party, however, paying his own costs.

THE 15TH APRIL 1850.

No 185 of 1849.

*Appeal from a decision of the Moonsiff of Nimaul, Mr. Snell,
dated 3rd July 1849.*

Bhogwan Pathur and others, (Defendants,) Appellants,

versus

Hurree Bhoojon Doss, (Plaintiff,) Respondent.

THE plaintiff sues to recover a bond debt, the bond bearing date 13th Assar 1254 Umlee, laid at rupees 118-8.

The defendants deny and plead—first, that the suit has been prompted by revenge, because appellants were witnesses in favor of a claimant to certain property attached at the instance of plaintiff, in an execution of decree suit; and secondly, that the defendant Bhogwan was at Midnapore on the date specified in the bond.

The moonsiff observes, "from the depositions of the witnesses it is clearly proved that the defendants gave the bond filed with the proceedings to the plaintiff, on the 13th Assar 1254 Umlee, and borrowed from him rupees 100, on the condition of repaying the same with legal interest in May 1255 Umlee, this they failed to do," and gives a verdict for the plaintiff.

The statement made in the petition of plaint is not only at variance with the evidence of the witnesses, but the latter is totally incredible, and the witnesses, if their testimony is faithfully recorded, have been guilty of perjury.

The witness, Jankee Gere, swears that the plaintiff has resided at the house of Seeboo Gere, at Haut Sonkorpore, for the last three years. The plaintiff himself says in his plaint that he resides in his

own house in Haut Sonkorpore. Some of the witnesses say that plaintiff carries on his business at Seeboo's house, where the loan was granted, but that he resided at Bahiree; and others, that he has lived altogether for the last two or three years in Seeboo's house, and has no fixed residence of his own. In spite of these conflicting statements and some others, and the many other improbabilities apparent from the records of the case, the moonsiff records a deliberate opinion that the bond is clearly proved by the evidence of these very witnesses. The moonsiff must either have wilfully closed his eyes to the glaring discrepancies alluded to above, or he must be totally ignorant of the value of evidence: in either case the decision is discreditable to him. The claim is totally unsupported by any trustworthy proofs, and, in my opinion, there can be no question that it is fraudulent, and preferred to gratify malicious ends. The appeal is decreed, with costs, and the decision of the lower court reversed.

THE 15TH APRIL 1850.

No. 186 of 1849.

Appeal from a decision of the Moonsiff of Kaseegunge, Khyrat Hossein, dated 4th July 1849.

Seebram Dey and Doorgaram Dey, (Defendants,) Appellants,

versus

Mudhoo Soodhun Nugtee, (Plaintiff,) Respondent.

THIS is an action for balance of rent, laid at rupees 40-2-1.

The plaintiff states that he entered on a farming lease of mehal Kaylagurea from the year 1254 Umlee; that the defendants are his tenants, and cultivate 10 beegahs 8 cottahs of land, the rent of which is rupees 21-2-13 in money, and 12 koorces in kind; that they gave the plaintiff an agreement to this effect, agreeably with which they paid part of their rents for 1254, 1255, and 1256 Umlee, but, failing to make good the balance, the plaintiff now sues.

The defendants deny their liability, and plead—first, that they are not tenants of the plaintiff, that they hold their leases from one Nujroo Beebée, to whom they have paid their rent; and secondly, that their liabilities annually amount to rupees 13, 3 annas, 17 gundas in money, and 12 koorces of dhan in kind.

The moonsiff observes that the kubooleut is duly certified by the attesting witnesses, and further confirmed by the measurement chitta, the account current of defendants, and the local enquiry of the ameen. From these, in the moonsiff's opinion, it is clear that defendants are liable annually to the plaintiff (who holds a farming lease from *all* the maliks) for rupees 21-2-13 in money, and 12 koorces of dhan in kind, and gives a verdict for the plaintiff.

In appeal, the defendants reiterate the pleas offered in the lower court. The present is a summary suit for rent. According to Sec-

tion 10, Regulation VIII. 1831, summary jurisdiction is restricted to enforcing payment of the rents paid in *past* years, to the entire exclusion of all claims to increase except on *bond fide* written engagements to such increase. Now in the present instance there is no proof of payment of rent for past years: there are no jumma-wasil-bakee accounts either for the years sued for, or for previous years. The only proof, save the kubooleut, of defendants' liability, is an account current in aggregate, in which the defendants and plaintiff are the only parties specified. In this account the defendants are represented as defaulters for the years 1254 and 1255, for the difference between rupees 21-2-13, the jumma demanded by plaintiff, and rupees 13, 3 annas, 17 gundahs, which defendants admit is the amount of their rent. If the former were really the jumma, it is extraordinary that the amount balance should in both years be exactly the same, and that plaintiff should have taken no steps to recover by distraint, or other summary process; and his omitting so obvious and natural a course is a strong argument against the probability of the truth of the account. Again, the account current allows defendants credit for rupees 13, 9 annas, in aggregate, but gives no detail of the payment, nor the date when made. It is very unlikely that one payment only should have been made in each year and exactly similar in amount, leaving in each year a balance corresponding with the difference between what plaintiff claims, and what defendants declare is their jumma. Such an account, in the absence of a jumma-wasil-bakee, or other evidence by which to check and certify it, is valueless, and no proof that defendants' jumma is as stated in the plaint. Again, the kubooleut is certified by attesting witnesses, who swear they witnessed the execution of a pottah and the kubooleut. Now the plaint distinctly sets forth that plaintiff entered on his farm with the understanding that the leases, as existing in previous years, were to continue in force; the necessity, therefore, of granting new leases did not exist, and the inference is they were never granted, and that the witnesses have stated what is not true, and consequently that their testimony is unworthy of credit: the kubooleut, therefore, as being neither supported by evidence nor probability, must be rejected as invalid. Lastly, it would appear that the maliks are at issue as to plaintiff's possession and the title deeds on which he holds the farm. The defendants seem to have sided with the party adverse to plaintiff's claim, which has no doubt given rise to the present suit. For these reasons, I reverse the judgment of the lower court, and decree the appeal, with costs.

THE 18TH APRIL 1850.

No. 201 of 1849.

*Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq.,
dated 21st July 1849.*

Poornanund Roy, (Defendant,) Appellant,

versus

Chowdhry Shamapersad Mittre, (Plaintiff,) Respondent.

THIS is an action to recover a bond debt, laid at Company's rupees 966.

The defendant denies the claim, and pleads that the suit has originated in enmity, and that Mochecram, the seller of the bond to plaintiff, was a pauper, and therefore not in a position to grant a loan such as above stated.

The principal sudder ameen observes that two attesting witnesses, whom there is no reason to doubt, certify the bond; that their testimony is corroborated by circumstantial evidence, (by the endorsement of the stamp paper in the name of appellant on the day preceding the execution of the bond, and the letter addressed by appellant to respondent, proposing to compound the claim,) whilst, on the other hand, defendant is unable to establish his pleas; the kuballa filed to prove that he borrowed money elsewhere to meet the Government demand for revenue, being evidently a fabrication, and the proof of the remaining pleas being altogether wanting,—and decrees for plaintiff accordingly.

In appeal, the defendant urges the same pleas as below, and moots others *de novo*, which latter are altogether inadmissible. I see no grounds for doubting the authenticity of the bond, nor for interfering with the decision of the principal sudder ameen. The former bears all the appearance of being a *bonâ fide* document, is duly certified, and came into plaintiff's possession in consideration of value received.

The appeal is, therefore, rejected, without serving a notice on respondent.

THE 22ND APRIL 1850.

No. 202 of 1849.

*Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq.,
dated 31st July 1849.*

Bherot Churn Sutputtee, (Plaintiff,) Appellant,

versus

Oodoy Churn Jena and Bydenath Jena, (Defendants,) Respondents.

THIS suit was decided originally by Mr. C. Mackay, late principal sudder ameen. The grounds of action were, first, for an injunction prohibiting the collector to record the name of defendant

Bydenath Jena on the rent roll of the district; secondly, to set aside two summary judgments passed by the collector and magistrate respectively; and lastly, to obtain possession, with mesne profits, of mouzahs Bansgureeah and chuck Dundee, as forming a part and portion of his 9-16ths interest in talooka Sahurdeeah. The plaintiff represents that the aforesaid talooka, of which he was proprietor of 9-16ths, having fallen into arrears of revenue on account of 1244 Umlee, was sold by the collector, and purchased by one Kartick Ram Jena, the father of the defendant, Oodoy Chand, *benamee* for 7,900 rupees. The purchase money was made good and deed of sale executed in the name of the aforesaid Kartick. The plaintiff proceeds to state that his possession of 9-16th of talook Sahurdeeah continued as before the sale, but to avoid future disputes Kartick Ram Jena executed a deed of transfer in the name of plaintiff's son, Nund Gopaul, conveying to him all rights and privileges in the said 9-16ths. In 1246 Kartick Ram Jena died, and his son succeeded to the property aforesaid, and, in spite of sundry demurrers raised by plaintiff, was duly recorded on the rent-roll of the district: subsequently, however, at the instigation of friends, or from other causes, the defendant, Oodoy Chand, entered into an agreement with the plaintiff to relinquish all claim to the 9-16ths, and stipulating not to interfere with his (plaintiff's) possession. In breach of good faith, however, and notwithstanding the agreement aforesaid, the defendant Bydenath (in collusion with the defendant Oodoy Chand) caused his name to be recorded in the registers of the collectorate as proprietor of mouzahs Bansgureeah and chuck Dundee, part and parcel of the 9-16ths aforesaid, and in virtue of that proceeding obtained sundry summary judgments against ryots for rent and for possession under Act IV. 1840, which plaintiff now seeks to set aside.

The defendant Bydenath Jena denies the *benamee* purchase of the 9-16ths, and pleads that plaintiff's possession in the name of his nephew, Nund Gopaul, is that of farmer of certain villages, and not as talookdar, and that plaintiff's having failed to produce the *ikrarnama*, he states, he obtained from Oodoy Chand, in any of the numerous cases in which he and the said Oodoy Chand have been concerned, is a strong argument against its existence; and lastly, that the two villages claimed were sold to defendants by Oodoy Chand, for rupees 875, and the deed of sale duly registered. The defendant Oodoy Chand confirms this statement in every particular.

The principal sudder ameen dismissed the suit, but in recording his judgment he pronounced an opinion on the validity of the *ikrarnamah*, which opinion was extra-judicial, seeing that possession of 9-16ths of talooka Sahurdeeah was not the matter at issue; but that of the two villages Bansgureeah and chuck Dundee, which the defendant Bydenath had purchased from Oodoy Chand. The suit was accordingly remanded and the principal sudder ameen directed

“ to confine his investigation and decision to the question before him, leaving the plaintiff, if he considers himself aggrieved, to any remedy he may be entitled to against the defendant Oodoy Chand, for breach of any agreement between them, and, further, to examine the witnesses attesting the kuballa filed by Bydenath in the presence of the vakeels of both parties, copies only of their depositions, as given in a mutation case before the collector, having been recorded.”

The present principal sudder ameen, having reviewed the judgment of his predecessor, observes : “ In support of this action plaintiff has adduced an agreement, alleged to have been given by the defendant Oodoy Chand Jena, a copy of a judgment of this court, sundry collectory receipts, and oral evidence. As this action is not brought on the agreement, there is no need to discuss its merits. The judgment before alluded to is not of the slightest use, as it does not show that the disputed mouzahs are included in the property thereby decreed. The collectory dakhilas show that a certain amount was paid on Oodoy Chand Jena's talook by Nund Gopaul Sutputee. If he and the plaintiff were one and the same person, they are no proof of proprietary right; where is the bill of sale, or title deeds got from the auction purchaser? it or they are the primary and only evidence that can avail plaintiff on this occasion. Oral evidence alone cannot prevail against Bydenath's bill of sale, satisfactorily proved by five of the subscribing witnesses, confessed to by the vendor, the former proprietor, and supported by sundry summary decrees (12 or 14 in number,) all abundantly showing that after purchase Bydenath enjoyed all the rights of a landed proprietor. Therefore, we think, plaintiff has entirely failed to show that he has been dispossessed of, or has any right to, the disputed mouzahs, and dismiss the action, with costs.”

In appeal, the plaintiff reiterates what he urged in the lower court. He maintains that the object of his suit is to restrain the defendant Oodoy Chand from selling the two villages aforesaid and for possession. To admit this plea would be to recognize plaintiff's right to dispute Oodoy Chand's title, a point which is not open to discussion in the present suit. The point for adjudication is whether Bydenath's deed of sale is or is not valid. The party in whom the right of sale is vested declares that it is; and his statement is corroborated by the attesting witnesses in whose presence the deed was executed. I see therefore no reason to interfere with the decision of the lower court. The appeal is accordingly rejected, without serving a notice on the respondents.

THE 22ND APRIL 1850.

No. 217 of 1849.

Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 7th August 1849.

Mussamut Keenee Bewah and others, (Defendants,) Appellants,

versus

Damoodur Geeree, (Plaintiff,) Respondent.

THIS is an action for possession, with mesne profits, laid at rupees 405-12-3.

This suit came in appeal before my predecessor on the 16th March 1847, when it was remanded to the principal sudder ameen (the office of the sudder ameen having been abolished) to decide on its merits. The principal sudder ameen considered the title deeds of the plaintiff defective and not trustworthy, and gave a verdict for the defendants. In appeal, the judge differed in opinion, and observed "that the attestation of the deeds and the registry of them in the cazee's books must prove the fact of their having been in existence at the time these formalities are recorded, yet the principal sudder ameen does not attempt to reconcile this fact with the opinion he holds of their recent fabrication. I therefore must believe that this very important point was overlooked by that officer;" and, considering that the investigation was incomplete and unsatisfactory, and did not meet the point at issue, the case was again referred for re-investigation.

The present principal sudder ameen thus records his judgment in the case. "Plaintiff brought this action to obtain from defendants possession, with mesne profits, of 10 beegahs lakhiraj land, estimated at rupees 405-12-9, on the following grounds. Defendants' father, Ruttun Doss, sold to plaintiff's father, in 1229 Umlee, 5 beegahs, executed a bill of sale, caused it to be duly registered, and gave him formal possession. The said Ruttun Doss subsequently borrowed a sum of money of plaintiff's father, and died leaving the debt unpaid. Plaintiff's father then brought an action against deceased's sons, the present defendants, Kissore Chutten Doss and Lochun Doss, for the recovery thereof, and obtained a decree against them, who, in satisfaction thereof, sold to him, in 1234, 25th Phalgun, the remaining 5 beegahs. He thus enjoyed possession of 10 beegahs, which forms the present grounds of action, during his lifetime, without let or hindrance, and his son (plaintiff) after him till 1250 Umlee, when the defendants, Kissore Chutten and Lochun Doss, aforesaid, *vi et armis* dispossessed him. Kissore Doss denies the execution of the said kuballas either by his father, or himself and his brother, and further pleads that his father died in 1228 Umlee, and that plaintiff is their "qudeem ryot," and on the strength of this he now falsely lays claim to the aforesaid 10 beegahs as proprietor.

The former principal sudder ameen, considering the two bills of sale adduced in support of this action to bear fraud on the face of them, dismissed the claim, but this decision was reversed in appeal, and the case returned with instructions to examine the cazee's register, and the decree obtained by plaintiff's father against the sellers, and call for proof of execution of said decree, and then to try the case *de novo*. Plaintiff has taken the necessary steps to procure the required documents; but we find by the copy of the return of the mohafiz of the superior court that they are not in existence. He states, however, that the suit instituted by plaintiff's father against the said Ruttun Doss's descendants, the present defendants, is entered in the register both of original and miscellaneous suits under the numbers alleged by plaintiff. On examination of the cazee's register for the year 1834, we further find copy of plaintiff's second bill of sale executed by present defendants. These facts are strongly corroborative not only of the truth of plaintiff's allegations, but also of the genuineness of the latter deed. Now, if the authenticity of this document be proved, the authenticity of the first is also proved, for the subsequent bill of sale recites the due execution by the vendor. We quite agree with the superior court that the appearance of the bills of sale neither indicates fraud nor bad faith: by defendants' exhibits it appears that the story of these forged bills of sale formed the subject of inquiry by the police, but the evidence was not of sufficient calibre to induce the magistrate to prosecute, and complainant was directed to have recourse to the civil courts, but from that day to this no stir was ever made about the matter. Why this indifference? If these kuballas be forgeries then the cazee and canoongoe are partakers of the crime. What inducement did or could plaintiff offer to induce them to run the risk of their reputation and liberty? So, as plaintiff's father's purchase and continued possession from the several dates to the day of his death, and subsequently plaintiff's possession is fully and satisfactorily established, therefore we award him possession of the 10 beegahs of disputed lakhiraj land, with mesne profits, &c."

In appeal, the defendants urge the same pleas as below. They take exception to the registry by the cazee, and declare it invalid, because he was not the cazee of the pergunnah in which the disputed lands were situated, and they further plead the disputed lands were resumed, measured, and released in the name of Kissore Doss, and that plaintiff never offered any opposition thereto. It would appear, however, from the records of this court that the offices of moonsiff and cazee were combined in one and the same person, and for the convenience of the community he was authorized to register deeds for pergunnah Jellamoottah and others. That the kubllaa, dated 24th Phalgun 1254 Umlee, was registered on that date, there can be no question; as the counterparts of the cazee's register for that period was forwarded to this court for record, and duly countersign-

ed by the judge. I therefore neither doubt the authority of the cazee to register nor the validity of his registration of the said kuballas. Again, the silence of Kissore Doss, at the time the disputed lands were resumed is accounted for by the fact of the latter being "dewutter," and therefore not legally alienable by sale. Defendants would therefore naturally conceal the circumstance of their having sold, and of plaintiff's possession. I see no reason to interfere with the decision of the principal sudder ameen, and the appeal is accordingly rejected without serving a notice on respondents.

THE 23RD APRIL 1850.

No. 211 of 1849.

Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 30th July 1849.

Punchanund Udhicarry and others, (Defendants,) Appellants,
versus

Sebuk Ramchand, (Plaintiff,) Respondent.

THIS is an action for possession of 5 beegahs 12 cottahs of lakhiraj land, laid at rupees 342.

Plaintiff states that his father purchased from Jassuda Dey and Manick Ram Roy, under two deeds of sale, dated respectively 1199 and 1240 Umlee, 33 beegahs of lakhiraj land; that in the year 1250 Umlee defendants distrained the crops of one Benode Sassmol, cultivator of the aforesaid 5 beegahs 12 cottahs of land; the said Benode sued to remove the attachment, in failure of which the plaintiff now seeks to establish his proprietary right and possession.

The defendants reply that they are the lawful heirs of Jassuda Dey, to whose property they succeeded in 1222 Umlee; that the land in dispute is part of certain rent-free lands, the produce of which is appropriated to idol worship; that the plaintiff has never been in possession of the land now claimed; and if he now seek to obtain possession by the deeds of sale he mentions, his claim is barred by the law of limitation, as he has never held intermediate possession of the property. The defendants add that Benode Sassmol, the cultivator of the lands, having refused to pay rent, and disputed the defendants' claim thereto in the courts, has now colluded with plaintiff in bringing forward the present suit. This case came before my predecessor on the 25th March 1848, and was remanded for further enquiry, touching the fact of possession, which had been overlooked in the court of first instance. The present principal sudder ameen, after carrying out the instructions of this court, thus records his judgment:—"From the ameen's report (deputed to the spot) we find that nine persons deposed for the plaintiff, and seven

for defendants. The evidence for the latter is not worthy of credit for sundry discrepancies detailed in the said report ; but had there been no discrepancies it could not prevail against that for plaintiff, supported by the evidence of persons examined in this court, which is again confirmed by duly registered title deeds, the two bills of sale aforesaid. The exhibits filed by defendants in no degree show that the disputed land forms part of their possession. It is too late in the day to call in question the vendor's right to dispose of her property," and gives a verdict for the plaintiff.

In appeal, the defendants object to the reasoning of the lower court, and reiterate all the pleas urged in their reply. Defendants lay stress on the summary decisions of the collector, but only one of these, that of Benode Sassmol, is entitled to any consideration, the others having been passed on confession of judgment, or in consequence of the neglect by the plaintiff to carry on his suit. Judgment in this case must be guided in a great measure by probabilities. They appear to me to predominate in favor of the plaintiff. His title deeds are beyond doubt authentic, in spite of defendants' arguments to the contrary, and his witnesses and accounts prove his possession to have ensued thereon, and to have continued to the present time. Such evidence is not, in my opinion, vitiated by the oral testimony of a few witnesses, which is not trustworthy, and a summary award in which the plaintiff was not concerned. I therefore see no reason to disturb the decision of the lower court, which is hereby affirmed, and the appeal rejected, without serving a notice on the respondent.

THE 23RD APRIL 1850.

No. 219 of 1849.

Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 11th August 1849.

Ram Ruttun Roy and others, (Defendants,) Appellants,

versus

Muthoor Mohun Mytee, (Plaintiff,) Respondent.

THIS is an action to recover certain monies paid into the collector's treasury, on account of the defendants, laid at rupees 511, 13 annas, 2 gundahs, 2 cowrees.

The principal sudder ameen records his judgment as follows:

"The plaintiff brought this action to obtain, from defendants, rupees 256, and a like sum as interest, making rupees 511-13-6, which he alleged he had paid to the collector on account of the said Pertab Narain Roy, as arrears of rent, for the years 1243 and 1245 Umlee, accruing on his *nimhee* muhal, to protect his own interests, he (plaintiff) having a farming lease, at that period, of part of the said

defendants' talook. Present defendant acknowledges plaintiff's having paid the said money as asserted, but pleads that he did so as his father's agent, and that he sent the different kists to him for payment into the collectorate, that he kept back the receipts and now fraudulently claims the money twice over, because he did not get a renewal of his lease." The principal sudder ameen proceeds to observe "that the only proofs adduced by defendant in support of his plea are ten letters acknowledging the receipt of as many kists, and the testimony of the two pleaders, who conveyed the money to plaintiff, and brought back the letters aforesaid." The latter, the principal sudder ameen observes, are not proved to be plaintiff's, and therefore are valueless, and the former contradictory and carries with it improbability. If the defendants' pleas were true, it is very unlikely he would not have taken measures from 1243 to the present time, to obtain the receipts of which plaintiff had surreptitiously possessed himself, whilst, on the other hand, he adds, the plaintiff has adduced satisfactory evidence to show that, after this action was brought, defendant assembled a punchayet to try and settle their differences, and that defendant was willing to pay rupees 400, but that plaintiff wanted rupees 450 and half the costs. Their endeavours were therefore fruitless, and for the foregoing reasons the principal sudder ameen gives a verdict for the plaintiff.

In appeal, the defendants urge the same pleas as in the lower court. The payments by plaintiff into the collectorate are admitted by defendants. The point then for adjudication is, whether the money so paid belonged to plaintiff or defendants. Defendants adduce no evidence that the letters acknowledging the receipt of sundry remittances were written by plaintiff; and the parties who swear they received them from plaintiff are unworthy of credit. Since then the proof that defendants sent plaintiff the money is wanting, the inference is that the money was his own, which he paid on defendants' account, and that consequently his claim for that amount on defendants is good and valid. I therefore see no reason to disturb the decision of the lower court, which is hereby affirmed, and the appeal dismissed, without serving a notice on respondent.

THE 29TH APRIL 1850.

No. 225 of 1849.

Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 16th August 1849.

Pearee Bhunj and others, (Defendants,) Appellants,

versus

Notobur Jena, (Plaintiff,) Respondent.

THIS is an action to recover possession on a deed of conditional sale, which had been duly foreclosed, laid at rupees 438-11-12.

The defendants urge various pleas, amongst others that the prescribed notice for foreclosure had not been served upon them, and that the proof of service was defective.

The principal sudder ameen observes that "defendant has made no attempt to prove his pleas, thus tacitly acknowledging they are only the inventions of a fertile brain," whilst, on the other hand, he observes, "the kut-kuballa, on which the action is founded, is satisfactorily proved by three of the subscribing witnesses to have been duly executed by the vendors, and that he (defendant) received a valuable consideration for it," and gives a verdict for plaintiff accordingly.

In appeal, the defendants demur to the proof of service of notice of foreclosure as being informal and therefore no evidence. From the record of the case it appears that the proof of service of notice of foreclosure consists of a copy of kyfeut of the nazir who issued the notice, a copy of a return filed by the peadah who served it, attested by two witnesses, in whose presence the istahar is represented to have been appended to the door of defendants' house. None of these documents have been certified in the lower court, and cannot therefore be admitted as evidence. The appeal is, therefore, admitted, and the case remanded to the principal sudder ameen, that he may take the depositions of the persons above mentioned on oath in the presence of the vakeels of both parties, and then dispose of the suit.

Costs of stamp to be refunded.

THE 30TH APRIL 1850.

No. 233 of 1849.

Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 1st September 1849.

Doorgapershad Chuckerbutty and another, (Plaintiffs,) Appellants,

versus

Kowar Narain and others, (Defendants,) Respondents.

THIS is a suit for possession of $\frac{6}{10}$ ths in mouzah Mendah Khalee and $\frac{1}{10}$ ths in mouzah Narain Dhara, with mesne profits, on two deeds of transfer, dated respectively 17th Bysack 1248 and 20th Poose 1252 Umlee, laid at 970 rupees 13 annas. Defendants deny the cause of action.

The principal sudder ameen thus records his judgment.—"The conditions under which the land aforesaid is claimed, come under the denomination of champerty, and therefore all such agreements are illegal and void *ab initio*; *vide* the Sudder precedent filed by defendants and also Golam Singh *versus* Keerut Singh, Select Reports, 9th November 1824, and others on the same question: therefore we dismiss plaintiffs' claim, with costs."

The appellant pleads that the law of champerty is inapplicable, inasmuch as he does not sue to enforce the terms of the title deeds, which were duly carried out when executed, but to recover possession of that which at a subsequent period he was deprived of. How and when he got possession does not appear; the probability is strongly against the truth of his statement. As his possession was contingent on the result of the suit which plaintiff was to carry on in behalf of the defendant, Koowar Narain Roy, and it is not attempted on the part of plaintiff to prove that any result followed; but whether possession followed the execution of the agreements or not does not affect the merits of the case. The present suit is clearly one of champerty, in which the plaintiff is the champertor, and, therefore, under existing precedents, the former is not cognizable by our courts. The appeal is accordingly rejected, without serving a notice on the respondents.

THE 30TH APRIL 1850.

No. 235 of 1849.

Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 4th September 1849.

Nurnarain Doss, (Defendant,) Appellant,

versus

Sheikh Panchoo, (Plaintiff,) Respondent.

THIS is an action for possession on a deed of conditional transfer, duly foreclosed, laid at rupees 758, 14 annas.

The plaintiff states that part of mouzah "Burgangootee," situated in Kutnugger, was sold to him conditionally in Assar 1251 Umlee. The defendant Benode Ram Doss, the present appellant's father, failing to redeem the mortgage, it was foreclosed in the usual manner, and he (plaintiff) now sues for possession. The defendant Benode Ram allows judgment to go by default. The other defendant (appellant) pleads—first, that his father had no power to alienate the ancestral property without his (appellant's) consent; secondly, that notice of foreclosure had not been duly served; thirdly, that his father had made over all his estate to his wife by gift; and lastly, that his father had been of unsound mind since 1240 Umlee, and incapable of managing his own affairs.

The principal sudder ameen observes: "The kut-kuballa, on which the present action is based, is satisfactorily proved by four of the subscribing witnesses to have been duly executed by the mortgagor, the aforesaid Benode Ram Doss; and it also as clearly appears that he received from the mortgagee a valuable consideration for it. The circumstance of Benode Ram having caused the said bill of sale to be registered is a further proof, if any be required, of its authenticity. By the evidence of the serving peon and two others taken by the

court, we find that the mortgagor was regularly served with a notice to pay his loan, or rather duly informed that the mortgagee had petitioned for foreclosure. Since, then, he failed to satisfy his demand, he, the mortgagee, is fully entitled to the property now claimed, defendant having entirely failed to prove his father was *non compos* at the date of the aforesaid transaction. The plea that he had not the power to dispose of his ancestral property without his (defendant's) consent is upset by his own answer, wherein he asserts that he made a gift of all his property to his wife, *i. e.*, to defendant's mother. Nothing need be said of the alleged gift. A copy merely of the danputter has been filed, which, as secondary evidence, is inadmissible where the original can be produced," and decrees for plaintiff.

In appeal, the defendant Hurnarain Doss takes exception to the reasoning of the lower court, and urges the same pleas as therein offered. There can be no doubt of the service of the notice of foreclosure on the defendant Benode Ram Doss; and the objection, that notice was not served at the residence of the said defendant, is frivolous, as the identity of the defendant Benode is never questioned, and the law (Regulation XVII. 1806) does not require, to complete the service of notice of foreclosure, that it should be served at the residence of the mortgagee.

The principal sudder ameen has, I think, satisfactorily disposed of the other pleas urged by defendant, and I see no grounds for interfering with the judgment he has come to.

The appeal is dismissed, without serving notice on the respondent.

ZILLAH MOORSIEDABAD.

PRESENT: D. I. MONEY, ESQ., JUDGE.

THE 24TH APRIL 1850.

No. 23 of 1848.

Regular Appeal from the decision of Moulvee Syed Abdool Wahid Khan Bahadoor, Principal Sudder Ameen of Moorshedabad.

Rao Ram Sunkur Roy and Messrs. J. and R. Watson and Co.,
sale purchasers, zemindars, (Plaintiffs,) Appellants,

versus

Bejoy Govind Bural, Judoo Nundun Bural, Muddun Mohun Bural,
and Muddoo Soodun Bural, (Defendants,) Respondents.

SUIT for the recovery of the possession of 435 beegahs, 2 cottahs, 5 gundahs of bhurratee lands in Bil Sonaduh, with mesne profits, at an annual jumma of Sicca rupees 435-1-16, calculated for 4 years and 7 months, to the amount of principal 1,974-14-16, and interest 429-5-14; total Sicca rupees 2,404-4-10, or Company's rupees 2,564-9-1, which added to the estimated value of the land, being Company's rupees 1,305, gives a grand total of Company's rupees 3,869-9-1. Instituted 24th August 1846, and decided 17th November 1848.

The plaintiffs rest their case on the joint purchase of pergunnah Rokenpore at a public sale, and assert that the lands in dispute are situated in turruf Perojepoor, part Chandpore, of the same pergunnah; and that the fact of their being bhurratee lands of Bil Sonaduh will be proved by the roobukarees of the deputy collector, and the then collector of the district.

The defendants plead that the lands in dispute are in their own zemindaree mouzah Ramdebpoore, maut Baugdah, dehee Churka, in pergunnah Gunkur, and not attached to pergunnah Rokenpore; that Kirtee Chunder Dutt, the forefather of the defendants in the maternal line, had purchased mouzah Ramdebpoore; and, after taking possession when the rye crops of the lands in dispute were plundered by one Jugroop Roy, the said Kirtee Chunder sued against him in suit No. 37 of 1801, and again, when they were plundered by Lokenath Chowdry, izardar of Chandpore, he sued against him too in suit No. 75 of 1809, and obtained from the civil court a decree for the lands in question as connected with Baugdah, and had enjoyed unmolested possession since; that the deputy collector's roobukaree in the case under Regulation II. 1819, could not affect the proprietary right of any individual.

The plaintiffs, in replication, stated that these decrees were not for the lands in dispute, nor against the former proprietors, and that Bil Sonaduh is mentioned in the rukhabundee papers of 1201 B. S., put in by the former proprietors.

The principal sudder ameen decided the plaintiffs' claim in part for 37 beegahs 17 cottahs, with costs and interest proportionately, and mesne profits to the amount of Company's rupees 37-14, with interest accruable to the date of realization.

The plaintiffs appeal from this decision, nearly on the same grounds set forth in their plaint before the lower court, and that, notwithstanding the report of the ameen deputed to the spot corroborated their statement, the principal sudder ameen had unjustly disposed of the case by decreeing their claim in part.

JUDGMENT.

The plaintiffs (appellants) in this case claim the disputed lands as the bhurratee lands of julkur Bil Sonaduh, which, with pergunnah Rokenpore, &c., they purchased at a public sale in the collector's office on the 30th January 1842, and they put in as evidence in proof of their claim a roobukaree of the deputy collector of Moorshedabad, dated 11th September 1845, and a roobukaree of the collector, dated 17th January 1846. These proceedings, the one confirming the other, were drawn up in a case under Regulation II. 1819, when the disputed lands with other lands contiguous were released from the claim of Government. These officers considered the lands in dispute as the bhurratee lands of Bil Sonaduh, but to have been in the possession of Bejoy Govind Bural, &c. defendants (respondents,) for about 25 or 30 years. It is clear from the evidence of witnesses on the part of the defendants, as well as a decree of the civil court of Moorshedabad, dated 12th June 1807, referring to a previous decree of the 27th July 1801, that these lands for more than 50 years have been in the undisputed possession of the defendants and their ancestors. In the decree of the 12th June 1807, they are put down at 400 beegahs attached to Ramdebpore. The different auction purchasers of pergunnah Rokenpore, julkur Bil Sonaduh, who were successively proprietors previous to the purchase on the part of the plaintiffs, never disputed the possession. The first claim to possession was made by the plaintiffs on the institution of this suit on the 24th August 1846. After visiting the spot, and examining the lands, I am inclined to the opinion expressed by the deputy collector in his proceeding of the 11th September 1845, that the lands were the bhurratee lands of Bil Sonaduh; but when they became so, it is difficult to determine. Perhaps some 60 or 80 years ago; but this fact does not affect the right of the defendants to the lands on the ground of possession. The possession holds good, whether as stated by the defendants the lands belong to them, as attached to their zemindaree lands of pergunnah Gunkur Dhee Churka, turuf Jungy-

pore, mouzah Ramdebore, maut Baugdah and Dookree Churreah, or whether they originally were, as I am inclined to believe, the bhurratee lands of julkur Bil Sonaduh. The title of undisputed possession by inheritance cannot be touched, and the law of limitation applies.

The appellants have put in evidence, as applying to this suit, a decree of the Sudder Dewanny Adawlut, No. 191, dated 8th July 1848, and they plead with reference to this decree that the possession can be disturbed. But the decree does not apply. I can only gather from this decree that the purchaser of an estate may sue for possession any time within 12 years after the purchase. There are *laches* which, if proved by a sale purchaser, would disturb antecedent possession however long undisturbed, and, if a sale purchaser did not question the possession within 12 years after the purchase, he could not claim it subsequently. In the case too in which this decree is given there was no malik. The proprietorship was not established. The law of limitation would be set aside to decide the question of the right of proprietorship. In the case under appeal the defendants have held possession unquestioned as maliks or proprietors for a period of years, and the law of limitation does apply. The measurement of the peshkar of my court in the presence of both parties, who attested the measurement papers, gives 419 beegahs, 7 cottahs, 2 gundahs, as the area of the disputed land. The measurement of the ameen deputed by the principal sudder ameen gave 439 beegahs 17 cottahs as the area, of which the principal sudder ameen decreed 39-17 in favor of the plaintiffs, releasing to the defendants 400, agreeably to the decree of the civil court of the 12th June 1807. I dismiss the appeal, modifying the principal sudder ameen's decree by decreeing to the plaintiffs 19 beegahs, 7 cottahs, 2 gundahs, and mesne profits, with interest, instead of 39 beegahs, 17 cottahs, being the quantity over and above the 400, according to the last measurement.

THE 24TH APRIL 1850.

No. 24 of 1848.

Regular Appeal from the decision of Moulvee Syed Abdool Wahid Khan Bahadoor, first grade Principal Sudder Ameen of Moorshedabad.

Rao Ram Sunker Roy and Messrs. J. and R. Watson, sale purchasers, zemindars, (Plaintiffs,) Appellants,

versus

Rameshur Bagchee and Bissesoree Dossea, mother and guardian of Bejey Govind Ghose, (Defendants,) Respondents.

SUIT for the possession of 41 beegahs 6 cottahs of bhurratee lands of Bil Sonaduh, valued at 123 rupees, with mesne profits for 5 years and 3 months, calculated at the annual produce of rupees 41,

annas 4, gundahs 16, viz. Sicca rupees 215-15-10, making with interest 60-13-0, 276-12-10, or Company's rupees 295-1-3; total 418-1-3, instituted 22nd April 1847, and decided 17th November 1848.

The circumstances in this case are similar to those in case No. 23 of 1848.

The principal sudder ameen dismissed the claim of the plaintiffs, with costs, on the ground chiefly that the defendants, although they could not show that the disputed lands were not the bhurratee lands of Bil Sonaduh, yet proved long possession, and filed in support of their pleas a decree of the judge of Moorshedabad of the 11th January 1805.

The plaintiffs, in appeal from his decision, state that the decree of the 11th January 1805, referred to by the principal sudder ameen, does not apply to this case, since the lands in dispute are claimed by them as the bhurratee lands of Bil Sonaduh, and the decree specifies the bhurratee lands of Parooleah Darrah; and as the defendants do not deny the fact of the lands being the bhurratee lands of Bil Sonaduh, a decree for the bhurratee lands of Parooleah Darrah will not avail them; that the statement of the principal sudder ameen regarding the possession of these lands on the part of the defendants for not less than 60 years, is refuted by the roobukaree of the deputy collector in a case under Regulation II. 1819, which shows that they had only been regained from the Bil for 25 or 30 years, and that water still lies upon them, and that as they (the plaintiffs,) are proprietors of the julkur, it is clear they must be proprietors of the lands when regained on which the water remains.

The respondents, in their answers, admit that the decree alluded to by the plaintiffs specifies the bhurratee lands of Parooleah Darrah, but state that they were washed away by the Pudda river, which became mixed with Bil Sonaduh, and that they are the lands of the zemindaree of Kadee Kola, dheo Nusipore, Heerkatec, Benode, Deghee, and Dyarampore, and not attached to Rokenpore. They do not object to the right of plaintiffs to the julkur of Bil Sonaduh.

• The fact of the defendants in this case holding uninterrupted possession of the disputed lands for a series of years, is satisfactorily established. It is not clear whether the lands are bhurratee lands of Bil Sonaduh, or, as specified in the decree of the civil court of the 11th January 1805, the bhurratee lands of Parooleah Darrah.

The plaintiffs refer to the roobukaree of the deputy collector of Moorshedabad in a case under Regulation II. 1819, the same as was filed in the case No. 23 of 1848, showing that the lands could not have been, as stated by the principal sudder ameen, 60 years in the possession of the defendants, because the deputy collector was of opinion that they had only been gained from the julkur about 29 or 30 years, but this was only a conjecture, and does not affect the title of the defendants on the ground of possession. It does not

follow, as pleaded by the appellants, that because they are the proprietors of the julkur they must consequently be the proprietors of the disputed lands, supposing them to have been once covered by it. From the local investigation I made it is probable, I think, that before or a little after the decennial settlement they were the bhurratee lands of Bil Sonaduh, but the Pudda river has so often changed its course in the vicinity of these lands, that it is as probable, as stated by the respondents, that the lands were once in Parooleah Darrah, and were washed away by the Pudda, which mixed with and became part of Bil Sonaduh. The respondents, however, have had possession of the lands unmolested for successive years beyond the period that would bring them under the protection of the statute of limitations. Though the defendants are different, the circumstances of this case are the same as those into which I have entered more fully in my decree No. 23 of 1848. I confirm the principal sudder ameen's decision, dismissing the appeal, with costs.

THE 24TH APRIL 1850.

No. 50 of 1850.

Regular Appeal from the decision of Moulvee Montaz Alli, Moonsiff of Gowas.

Nundloll Mundul, (Defendant,) Appellant;

versus

Khidmut Oomardee and Joomardee Mundul, and others, (Plaintiffs,) Respondents.

CLAIM, for the recovery of Company's rupees 55, principal and interest, under an ikrar executed by the defendant on the 17th Srabun 1244; instituted 24th July 1849, and decided 23rd February 1850.

The defendant denied the claim, and pleaded that, as his father died in the month of Bhadur 1243 B. S., he could not have executed the deed, as alleged, and that it was not, therefore, genuine.

The moonsiff gave a decree in favor of the plaintiff.

The defendant appealed, on the ground chiefly, that he was unable to establish his pleas in consequence of sickness, and that the deposition of the writer of the bond had not been taken.

There are no sufficient grounds for appeal in this case. The defendant could not prove that his father died before the execution of the ikrar; and his plea of indisposition and the neglect of his vakeel to acquaint him with what evidence was required, is inadmissible. He was allowed three months to furnish proof to establish his pleas. Three witnesses swore to the execution of the ikrar. It is not necessary as a general rule that the writer of the deed should also be called on to swear to its execution. Such a course should be

adopted when suspicion rests upon the genuineness of the document, and the case admits of a doubt. The appeal is dismissed, and the moonsiff's decision confirmed.

THE 25TH APRIL 1850.

No. 25 of 1848.

Regular Appeal from the decision of Moulvee Syed Abdool Wahid Khan Bahadoor, first grade Principal Sudder Ameen of Moorshedabad.

Rao Ram Sunker Roy and Messrs. J. and R. Watson, sale purchasers, zemindars, (Plaintiffs,) Appellants,

versus

Sheernun Comar, wife of deceased Rae Hurry Singh, (Defendant,) Respondent.

SUIT for the possession of 39 beegahs 12½ cottahs of land, and mesne profits with interest, Sicca rupees 263-13, or Company's rupees 281-6, estimated value of the lands 119, total rupees 400, 6 annas; instituted 27th March 1847, and decided 17th November 1848.

Although the defendants are different, the circumstances of this case are similar to case No. 24 of 1848; and as in that case I have given my opinion fully, I need only refer to it for the grounds of my decision in this. The appeal is dismissed, and the principal sudder ameen's decree confirmed.

THE 27TH APRIL 1850.

No. 61 of 1850.

Regular Appeal from the decision of Sheikh Gholam Furreed, first grade Moonsiff of Hureerparrah.

Benode Hulsanah, Sadoo Sheikh, Jumoo Sheik, Bunoo Beebe, and Ausghur Sheikh, (Defendants,) Appellants,

versus

Khyrutoolah, (Plaintiff,) Respondent.

CLAIM, for the recovery of a bond debt, with interest, Company's rupees 62-7-16-1, executed 2nd Joist 1250 B. S.; instituted 24th February 1849, and decided 20th March 1850.

From the plaint it appears that the defendants, Haniff Sheikh, Benode Sheikh, Halsanah, Sadoo Sheikh, and Jumoo Sheikh, having jointly borrowed Company's rupees 37, executed the bond in favor of the plaintiff, but failed to pay the debt; on the death of Haniff Sheikh, his wife, Bunoo Beebe, and sons, Ausghur and Hoseyn Sheikh, and daughter, Oomega Beebe, minors, were included as defendants.

The defendants, Benode, Halsanah, Sadoo Sheikh, and Jumoo Sheikh, denied the debt.

The moonsiff gave a decree for the plaintiff in equal proportion against the defendants Benode, Sadoo, and Jumoo, and the property left by Huniff Sheikh in the possession of his heirs, to the amount of Company's rupees 77-15-8-1, with interest to the date of realisation.

The defendants appealed from this decision, chiefly on the ground that the writer of the bond could only write his name, and that consequently it was improbable he should have written out the bond, and that the moonsiff had not sent for him nor for the purchaser of the stamp paper on which it was executed, although they had applied for the same.

The appellants have no ground for appealing from the moonsiff's decision. It was not necessary to send for the purchaser of the stamp, and the writer of the bond admitted in his deposition before the moonsiff that he wrote it. The execution of the bond was satisfactorily proved, and the claim of the plaintiff established.

The appeal is, therefore, dismissed, and the moonsiff's decision confirmed.

THE 27TH APRIL 1850.

No. 113 of 1839.

*Regular Appeal from the decision of Baboo Gooroopershad Bose,
Moonsiff of Kandhee.*

Joyhurree Singh, (Plaintiff,) Appellant,

versus

Brijolal Doss *alias* Lall Mohun Doss, (Defendant,) Respondent.

CLAIM, for the recovery of a bond debt, principal Company's rupees 4-4, interest 2-13-3, total Company's rupees 7-1-3; instituted 15th February 1849, and decided 10th August 1849.

The plaintiff states that the defendant borrowed the money from him, and executed the bond on the 5th Srabun 1250 B. S., but never liquidated the debt.

The defendant replies that his maternal uncle, Panchanund Sircar, held a jumma in the zemindaree of Ramkanac Purnamanick, and that, after his death in 1249 B. S., one of the zemindar's agents sued against him (defendant) summarily under Regulation VII. 1799, and that he was obliged to borrow the amount specified from the plaintiff in order to meet the demand, and executed the bond; but that he had liquidated the debt with interest on the 28th Assin 1250 B. S., and the bond had never been returned to him.

The moonsiff called the defendant in his presence, and believing him to have been a minor at the time the bond was executed, and that it was executed through collusion, dismissed the case, with costs.

The plaintiff, in appeal from this decision, urges chiefly that the defendant admitted the execution of the bond, and that his (the plaintiff's) witnesses proved that the defendant was not a minor at the time, and that, if the moonsiff doubted the fact, he should have called for further evidence.

The only point to determine in this case is, whether the defendant at the time he executed the bond was a minor or not. This point is not clearly established. The moonsiff might be deceived by the personal appearance of the defendant. The fact that a suit was brought against him by the zemindar under Regulation VII. 1799, which is the alleged cause of his having borrowed the money and executed the bond, renders it probable that he was no longer a minor. The moonsiff should have called for his junnum putttee, or taken further evidence to satisfy himself on this point. The appeal is admitted, and the case will be remanded to the moonsiff for re-trial. The value of the stamp in appeal to be returned to the appellant.

THE 29TH APRIL 1850.

No. 39 of 1850.

Regular Appeal from the decision of Baboo Dwarkanuth Roy, first grade Moonsiff of Lalbaugh.

Brijo Kishore Dutt, (Plaintiff,) Appellant,

versus

Meechoo Kewot Mundul, (Defendant,) Respondent.

CLAIM, for the recovery of a debt of Company's rupees 13-8, due from the defendant; instituted 12th June 1849, and decided 23rd January 1850.

The plaintiff states that he had a shop in Katra Pushar Hutta, and traded, that, on the 10th Phalgun 1255 B. S., the defendant informed him that he had 20 maunds of huldee in his aurut for sale, which the plaintiff agreed to purchase at 2 rupees 2 annas per maund; that he paid him 6 rupees in advance, but never received the huldee, and that the amount was debited to the defendant in the plaintiff's *khata-buhee* on the same day.

The defendant replied that he had had dealings with the plaintiff for a long period, that the plaintiff stood in his debt 7 rupees 14 annas, and in liquidation of this paid the 6 rupees, and asked the defendant to let him have 3 or 4 maunds of huldee, but that he had received no advance.

The plaintiff, in reply, denied that he had had any previous dealings with the defendant, and therefore could not have been in his debt.

The moonsiff considered there was sufficient proof of the parties having had dealings with each other; and as the 6 rupees was entered

in the defendant's khata-buhee as a payment from the plaintiff, he dismissed the suit, with costs.

The plaintiff appeals from this decision, urging nearly the same grounds as in his plaint.

From the account-books of both parties produced before me, it appears that a debit and credit account had been carried on between the plaintiff and defendant, and that the 6 rupees was a payment towards this account, and not, as asserted by the plaintiff, an advance on his part for the supply of huldee. The appeal is dismissed, and the moonsiff's decision confirmed.

THE 30TH APRIL 1850.

No. 9 of 1850.

*Regular Appeal from the decision of Baboo Tarrakishen Haldar,
Moonsiff of Jungypore.*

Ramdyal Ghose, (Plaintiff,) Appellant,

versus

Benode Roy and others, (Defendants,) Respondents.

SUIT for 147 rupees, estimated value of kullaye crops, damaged by the defendants; instituted 17th February 1849, decided 19th December 1849.

The plaintiff states that in pergunnah Chandpore, maut Bagdunga, they had taken a lease of 70 beegahs of land from Burra Benode Roy and his son, Bhowanee Pershad Roy, on the 25th Bhadur 1255 B. S., and cultivated the same with kullaye; that there was a full kullaye crop on them, when the defendants Chota Benode Roy and Anung Burma, in execution of a decree obtained by them against Bhowanee Pershad Roy, Burra Benode Roy, and Muncehur Roy, caused the 70 beegahs to be attached as 30 beegahs, and that, from want of care on the part of the decreeholders, the whole crop was destroyed by the cattle of Chota Benode Roy, Anung Burma, and others.

The defendants, Chota Benode Roy and Anung Burma, denied the claim, and pleaded that they had given in a list of 30 beegahs of land with kullaye crops on them to the moonsiff, who deputed an ameen to attach them, but that the ameen did not attach them, as no one would take charge of them.

The defendant, Burra Benode Roy, admitted the claim.

The moonsiff decreed for the defendants, dismissing the suit with costs; and the plaintiffs appeal from the decision chiefly on the ground that it was given against them, notwithstanding their statement was fully corroborated by the report of the ameen deputed to the spot, and because the argument held by the moonsiff that there were cattle grazing on the surrounding lands, and that it was not likely they would make a difference and destroy the plaintiff's crops and leave other crops untouched, is not tenable, since the crops upon

the other lands had been reaped, and those belonging to the plaintiffs were not reaped in consequence of the attachment, and were destroyed afterwards, when no one took charge of them, and cattle were allowed to graze upon them, and that the moonsiff is in error when he states that the crops are ripe in the month of Poos, which is not the case.

The investigation of this case on the part of the moonsiff appears incomplete. The damage sustained by the plaintiffs from the destruction of their crops is proved by the ameen's report; and if the moonsiff doubted the truth of that report, he should have taken further evidence before he dismissed the plaint. The appeal is, therefore, admitted, and the case remanded for re-trial. The stamp value of the petition in appeal will be returned to the appellant.

THE 30TH APRIL 1850.

No. 43 of 1843.

Original Suit.

Mr. and Mrs. Roots, Plaintiffs,

versus

T. Clark and his son, T. F. Clark, Albert DeHochepped Lar-pont, Charles E. Newcomen, and John Beckwith, representatives of R. H. Cockerell, deceased, Robert Spiers and William Martin, of the firm of Messrs. Cockerell and Co., William Ripley Clark, of the house of Messrs. Cockerell and Co., and William Henry Smoult, representative of William Hickey, deceased, late Sheriff of Calcutta, Charles Jones Richards and Henry Cowie, Assignees to the estate of Messrs. Cockerell and Co., of Calcutta, and Rao Ram-sunkur Roy, Defendants.

CLAIM, for the recovery of the possession of 12 annas share of Mysathul and the whole of Boodool factories, with appurtenances attached and dwelling house and garden, &c., and the value of 149 maunds 14 seers of indigo, &c., estimated at Company's rupees 47,235-7-1, instituted 6th April 1843.

The plaintiffs sued against the defendants for the recovery of the property alluded to, stating the particulars of their ejection by the defendants in their plaint.

This suit was first instituted in this court on the 6th April 1843, *in formâ pauperis*. Mr. H. P. Russell, the then presiding judge, nonsuited the case without recording his decision agreeably to Act XII. 1843. The suit upon appeal was remanded by the Court of Sudder Dewanny Adawlut on the 6th April 1846, because the requirements of Act XII. 1843 had not been fulfilled. It was again brought upon the file in this court, and again nonsuited by Mr. Russell, the judge, on the 19th May 1848, on the ground that the zillah court had no jurisdiction. The parties a second time

appealed to the superior court, and the superior court a second time, on the 4th September 1848, remanded the case for re-trial, on the ground that the zillah court had jurisdiction.

The following are the principal points in the history of this case:

Mr. John Rose, an East Indian, died intestate on the 2nd July 1832, leaving 12 annas share of Mysathul indigo factory, a factory at Boodool, and other property. To carry on the Mysathul indigo factory Mr. Rose, shortly before his death, received advances from the firm of Messrs. Cockerell and Co., which were secured to them by a mortgage of his share of the factory and a nominal bond. What the stipulated period and conditions of the mortgage were does not appear, as the parties have never produced the mortgage deed. There was a debit and credit account going on between Mr. Rose and Messrs. Cockerell and Co., up to the date of his decease.

Mr. R. H. Cockerell took out letters of administration from the Supreme Court on the 1st January 1833, as a judgment creditor.

The account between Mr. Rose and Messrs. Cockerell and Co., after his decease, was carried on with his widow, Mrs. Rose, and when in June 1834 she married Mr. Roots, it was kept up in the names of Mr. and Mrs. Roots. In September 1843, Messrs. Cockerell and Co. made partial advances to Mr. Roots for the indigo season of 1835, having taken as security from him a bond for 20,000 rupees, and a life insurance for 10,000 rupees.

In March 1835, Mr. T. F. Clark, son of Mr. T. Clark, with others, took forcible possession of the factories with the appurtenances attached to them.

Mr. Roots complained to the magistrate, who, on the 2nd June 1835, dismissed the complaint. He then appealed to the commissioner, who, on the 4th July 1835, directed that he should be put in immediate possession, and Mr. T. F. Clark was ordered to quit the factory in one day.

Mr. Roots then took possession and prepared 149 maunds 14 seers of indigo.

In August 1835, Mr. T. F. Clark with a Mr. Ripley seized the factories and all the property attached to them. Messrs. Cockerell and Co. having taken a writ out against Mr. T. F. Clark, and Mr. Ripley having been appointed a special bailiff and directed to seize whatever property could be pointed out as belonging to Mr. Clark, they seized 147 maunds, 22 seers, $5\frac{1}{2}$ chittacks of indigo belonging to Mr. Roots as the property of Mr. T. F. Clark. It was sent to Calcutta, and was sold on the 11th December 1835 for rupees 15,316, 13 annas, 8 pie.

There are letters filed in the papers of this case, which place these proceedings in a very unfavourable light. I find a letter from Mr. R. Torrens, No. 5, dated 15th September 1835, addressed to Mr. E. M. Gordon, the then officiating commissioner of circuit, in which he writes as follows:

“ I need not detail the facts as you are so well acquainted with them. My object in addressing you is to bring to your notice

the very unfair conduct of Messrs. Cockerell and Co., in conjunction with Clark, and, it appears to me, the arbitrary act of the sheriff.

"The house of agency above referred to, finding they could not oust Roots by the violent means they had recourse to, bring an action on Clark who does not defend it. I cannot state what progress this suit may have made in the Supreme Court; but it must have been decided *ex parte*, judging from the short period it appears to have occupied. A Mr. Ripley, a clerk in Cockerell and Co.'s house, is sent up, who is nominated the special bailiff of the sheriff, and proceeds to attach all the property your court had put Roots in possession of—a person being procured to point the property out as Clark's."

The officiating commissioner, in his reply to this, No. 386, dated 19th September 1835, writes as follows:

"Your letter discloses a history of fraud and injustice absolutely disgusting, and utterly disgraceful, in my opinion, not only to the parties concerned, but to the character of any Government who permits such things to be without attempting to remedy them.

"All I can do is to forward your letter to Government, with a strong recommendation that some steps may be taken so to define the powers of the sheriff, as to prevent the recurrence of a similar outrage."

Mr. Cockerell, as administrator, in agreement with the firm of Cockerell and Co., caused the factories, 12 annas share of Mysathul, and the whole of Boodool, to be sold at public auction on the 22nd March 1836, and they were bought by Mr. Clark for 19,250 rupees, who obtained possession and retained it since.

Mr. Roots brought an action for trespass in the Supreme Court against Messrs. Cockerell and Co., in September 1836, and obtained a decree for damages, 2,000 rupees, in March 1837.

This is as far as I can collect from all the papers an abstract history of the case.

The grounds of the defence are as follows, as elicited chiefly from the answers of Mr. C. E. Newcomen and Mr. Ripley: that Mr. Rose mortgaged his property to the house of Messrs. Cockerell and Co., and that after his death, with the consent of his wife, Mr. R. H. Cockerell was appointed administrator to his estate; that every authority for the management of the estate was vested in the administrator, and that the acts of the administrator, if that authority was abused, were not cognizable in the zillah court, but in the Supreme Court; that Mr. Ripley was sent as a special bailiff with a writ to seize the indigo; that he acted in conformity with the orders of the Supreme Court, and that any deviation on his part from the rules observable in the execution of the writ of the Supreme Court was cognizable by the Supreme Court and not by the zillah court; that a debit and credit account was carried on between the firm of Cockerell and Co. and Mr. Roots; and that Mr. R. H. Cockerell, as administrator, sold the factories to Mr. T. Clark, for rupees 19,250.

Mr. Clark pleaded the difference in the claims of the two plaintiffs as a ground for the rejection of the suit, one suing for the indigo and the other for possession, and that the institution of the suit in the zillah court was opposed to the provisions of Section 16, Regulation III. 1793.

The plaintiffs replied that, agreeably to Act XI. 1836, the case was cognizable by the zillah court, as the property in dispute was situated in the district of Moorshedabad, and they put in a supplementary plaint, including Rao Ramsunkur and others, as defendants.

The defendant Rao Ramsunkur pleaded, in his answer, that he had purchased the 12 annas share of Mysathul factory, but had received no deed of conveyance, and had not yet obtained possession, and that the boundaries of the factory were not specified in the plaint.

The plaintiffs, in their replication, added that this purchase had been made through collusion in order to put them to extra trouble in the prosecution of the suit.

Rao Ramsunkur rejoined, but there was nothing material in the rejoinder.

JUDGMENT.

The plaintiffs claim 47,235 rupees, 7 annas, 1 pie, as per following account:

15,216	13	8	1. Price of indigo of the 12 annas share of Mysathul sold under the writ obtained by Messrs. Cockerell and Co., at the sheriff's sale.
Deducting	6,523	2	4 On account drafts drawn by Mr. Roots on Messrs. Cockerell and Co., with interest, there remains
	8,793	11	4
	7,274	8	4 interest,
			Co.'s Rs. As. Ps.
Balance,	16,068	3	8 or, 17,139 7 1
$\frac{3}{4}$ th share value of the factory,			20,000 0 0
Whole ditto Boodool,			2,000 0 0
Dwelling house and garden,			6,000 0 0
2 Elephants,			1,600 0 0
2 Horses,			300 0 0
8 Bullocks and 4 carts,			100 0 0
18 Plough oxen and ploughs,			96 0 0
Total,...			47,235 7 1

The indigo sold under a writ at the sheriff's sale does not come within the jurisdiction of this court.

There remains only therefore the possession of the factories and their appurtenances. To this the jurisdiction of this court clearly

extends, and the question to decide is whether the plaintiffs were illegally dispossessed of the factories, or in other words whether the sale of the factories on the part of Mr. R. H. Cockerell, the administrator to the estate of Mr. Rose, deceased, was legal or not.

In the letter of administration granted by the Supreme Court to Mr. R. H. Cockerell, the preamble is as follows :

“Whereas the said John Rose has lately departed this life leaving effects *within the jurisdiction* of the Honorable Court intestate, the said Court desires that the *goods, chattels, credits, and effects* of the said deceased should be well and truly administered and disposed of,” &c.

The words I have *underlined* clearly refer to *personal* property *within the jurisdiction* of the Supreme Court, and not to *real* property *beyond* its jurisdiction. The factories were not within the jurisdiction of the Supreme Court. The sale, even if legal, was conducted with some degree of precipitancy. Mrs. Roots, the heir to the estate of the deceased Mr. Rose, does not appear to have been consulted. There is no consent or deed of release on her part. Due regard was not paid to her interests, and all the acts preceding this last crowning act, the sale of the estate show that much unfairness and great oppressions were exercised against the plaintiffs, in consequence of which through a long and protracted struggle they have been reduced to beggary, and obliged to sue for their rights as *paupers*.

The question of jurisdiction was decided by the Court of Sudder Dewanny Adawlut in the case of Hoo, appellant, *versus* Peter Marquis, respondent, July 10th, 1827, in which they decreed possession of lands sold by an administratrix of an intestate's estate, who had taken out letters of administration from the Supreme Court. The advocate general gave an opinion that she could not make a good title to a purchaser of any of the real property of the intestate, and that the vendee, under her conveyance, may, at any time, within 20 years, be ousted by ejectment.

Considering the sale to have been illegal, and this court to have jurisdiction, I decree immediate possession of the 12 annas share of the Mysathul and the whole of the Boodool factory, with all the appurtenances attached at the time the plaintiffs were dispossessed, including the house and garden, &c., valued altogether at 30,096 rupees. Agreeably to the provisions of Section 19, Regulation XXIII. 1814, the costs of the suit will be charged as follows :

Rao Ramunkur Roy, defendant, having admitted the purchase of the 12 annas share of Mysathul will pay his own costs. The remaining costs will be defrayed by Mr. T. Clark, defendant, and the representatives and assignees of Messrs. Cockerell and Co., defendants. Mr. Smoult, Mr. Ripley, and Mr. T. F. Clark are exonerated from the liability of this decree.

ZILLAH MYMENSING.

PRESENT : R. E. CUNLIFFE, ESQ., JUDGE.

THE 1ST APRIL 1850.

No. 11 of 1846.

Appeal from the decision of C. Mackay, Esq., Principal Sudder Ameen of Zillah Mymensing, dated the 30th May 1846.

Bhyrub Chunder Chowdhry, (Plaintiff,) Appellant,

versus

Tareenee Kunth Lahoree and others, (Defendants,) Respondents.

Sumboo Chunder Chowdhry and Hur Chunder Chowdhry,
Petitioners.

THE history of this case is recorded in my decision of the 16th May 1848, when a decree was passed in favor of appellant, which directed appellant to be put in possession with wasilat of a 5 annas, 6 gundahs, 2 cowries, and 2 krants of such portion of mouzah Pauchbaree as might, in execution of the decree, be found in the possession of the respondents within the boundaries laid down in the plaint. From this decision a special appeal having been preferred, the case was remanded for trial on the points recorded in the decision of the Sudder Dewanny Adawlut of the 4th January 1849. With regard to the first of these, viz., the admissibility or otherwise of the claim under the law of limitation, the Court observe that the judge should have called for the papers of the case under Regulation XV. 1824, and satisfied himself as to the fact of possession or not, before ruling the point upon which turns the admissibility or otherwise of the claim. I beg to state that, previous to my decision of the 16th May 1848, the papers of that case had been sent for, and that I was satisfied with appellant's possession previous to the case under Regulation XV. 1824, and copies of the papers in that case on which my opinion was founded, were filed with the case; therefore, on the grounds recorded in the decision of the 16th May 1848, I do not consider the suit barred by the law of limitation. With regard to the second point, to carry out the orders of the superior court, an ameen was deputed to make a map of the land in dispute, and to make a full local enquiry as to the existence of

any portion of mouzah Pauchbaree within the boundaries recorded in the plaint. He filed his proceedings upwards of a month ago, recording his opinion, for the reasons stated therein, that the lands in dispute are not any part of them in Pauchbaree, but belong to other mouzahs belonging to and in possession of the respondents; and the petitioners concurring in the view the ameen has taken, to whose proceedings, since they were filed, no objections have been made, the appeal is dismissed, with costs.

THE 2ND APRIL 1850.

No. 14 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 2nd March 1849.

Goluckshadeo and others, (Defendants,) Appellants,

versus

Joogul Kissore Acharje and others, (Plaintiffs,) Respondents.

RESPONDENTS sued to cancel an order of the sessions judge under Act IV. 1840, and for possession with wasilat of about 13 arras 10 cottas, appertaining to Nyanparrah, in their talook Sreerampasha, for which the appellants had sued their ryots, Gool Mahomed and another, under Act IV. 1840, calling it para Galdagee, in their talook Telegatee. Respondents appeared in the case in the foudaree, which was decided in their favor, but on appeal the session judge reversed the magistrate's order as the map of the deputy collector showed that the land in dispute was para Galdagee, which is contrary to the deputy collector's chittas. Appellants answered that the measurement of Sreerampasha was not made before him, and that some of respondents' witnesses have stated there is a place called Galdagee on the bank of the Kosye river. Respondents replied that the appellants having fraudulently caused a line to be drawn and ink thrown upon that part of the map of the deputy collector, where they allege para Galdagee to have been written, took a copy of it, and obtained the summary order which they sue to cancel, while there is no mention of Galdagee in the chittas.

The principal sudder ameen decreed in favor of respondents, on the grounds that the deputy collector's chittas of Sreerampasha and roobakaree of the 31st March 1843, and their six witnesses, prove that the land in dag 10 has all along been in their possession, and that appellants cannot have land on the north of the river, as those chittas show that the river was the south boundary of Sreerampasha, and that it appears from the roobakaree of the commissioner of the 10th July 1847 that the mohafiz of the collectorate and others were dismissed for having permitted the alteration of the map to be effected, and although one of the appellants and others were committed to the sessions in this matter and acquitted, yet it

appears from the above roobakaree of the commissioner, who sent for the deputy collector who made the map, and from the deposition of his peishkar, Kaleenath Rai, that Galdagee has been fraudulently inserted in the map. That the khut of Raja Raj Sing, dated 13th Phalagoon 1217, in which Galdagee is mentioned as part of talook Telegatee, looks newly written on old paper; and from the kyfeut of the mohafiz on the petition of Bholanath Shome, it appears that there is no place in the appellants' talook called Galdagee, and that appellants' eight witnesses are not respectable persons, and mostly his ryots and defendants.

In appeal, it was urged that respondents have given no proof that the land in dispute is Nyanpara, of which there is no mention in dag 10, or in the deputy collector's roobakaree, that appellants were not present at the measurement by the peishkar, that the punjsala shows there are only 4 pooras 13 arras in Sreerampasha, while the deputy collector found 24 pooras; that after Bholanath Shome had taken a copy of the map, respondents applied for one, but did not take it saying it was unnecessary, that dags 13, 14, and 15 do not agree with the map; and that the khut of the Raja being with one Sonaram, a shareholder with Ramsing, and from whom they have only lately obtained it, they could not file it in the case under Act IV. 1840.

I fully concur in the decision of the principal sudder ameen. The khut of the raja has every appearance of being lately written, the ink of the writing is very dark, while that of the seal is particularly faint, besides which documents are sealed after they are written, whereas a part of a letter has evidently been written upon the impression of the seal, another suspicious circumstance is that Ramsing was a servant of the appellants. The appellants' plea that they were ignorant of the land having been included in the measurement of Sreerampasha is difficult to be believed, for it was twice measured, first by an ameen, and his measurement on testing by the deputy collector having been found incorrect, it was again measured by him, and if the appellants' lands had been unjustly included they would have been informed of it by the ryots residing on it. The appellants' objection that Nyanpara is not mentioned, as other bunds and paras, in the chittas, is true, but may have arisen from the negligence of the writer of them, as in like manner he has not recorded on the map all the boundaries of dags 13, 14, and 15, but in no other part of the map is any place, except that in dispute, viz., para Galdagee, entered, which is not to be found in the chittas. As to the punjsala not containing the same quantity of land as found on measurement, that is too common an occurrence to need comment, and in regard to the copy of the map not having been filed by respondents in the case under Act IV., each party filed only that which supported their statements. The appeal is dismissed, and the principal sudder ameen's decision affirmed, with costs.

THE 3RD APRIL 1850.

No. 15 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 2nd March 1849.

Brijokishore Rai, (Defendant,) Appellant,

versus

Gopeekunth Misser, (Plaintiff,) Respondent.

RESPONDENT states he is proprietor of talook Akool Sha, hissa 9 annas Bidyabullub mouzah, in which is bund Bullar, and that two of the defendants who have not appealed are proprietors of the other 7 annas of the mouzah; that to the south of bund Bullar and north of Buroogram, appellant's talook, there is a "kanda," or high ground, which forms the boundary between them; that in a suit under Act IV. 1840, in which appellant stated respondent was about to dispossess him of 5 arras of land, the magistrate ordered possession according to a map in a suit under Regulation III. 1828, from which he appealed, and an ameen was deputed by the judge, who *ex parte* laid down a bater as the kanda and gave appellant possession of 15 arras of his land, which was upheld by the judge, whose order he sues to reverse and for possession with wasilaut.

Appellant claimed the land as his lakhiraj, which had been measured in dag 5, and that the ameen deputed by the judge found the land in dispute to be included in dag 5.

The principal sudder ameen decreed in favor of respondent, because appellant has produced no other documents besides the chitta, as kubooleuts, &c., and that chitta does not prove his claim, for in that map part of the land in dispute is stated to be in the "zuber dukhul" of the 7 annas proprietors of mouzah Bidyabullub, neither is there any mention of bund Bullar in the chittas; that the boundary claimed by respondent is high and three hats broad, while that claimed by appellant is level with the ground and only one hat broad, and the former is the more natural boundary between two mouzahs; and that from the chittas given in to the canoongoes, filed by respondent, and from the registry of lakhiraj, dated 20th Chait 1202, and the release of the same by Prankishen, dated 6th Ughun 1219, filed by the petitioner in this case, it is fully proved that bund Bullar is part of the 9 annas hissa of mouzah Bidyabullub.

In appeal, it is urged that appellant's kubooleuts, &c. were not filed as being merely private documents, and that the 7 annas proprietors were never in possession as stated in the map, neither have they filed any objection, therefore that argument cannot avail the respondent; and that Kalleechnurn's lakhiraj is entered in the place in dispute in the map of the ameen deputed by the judge; and that when the lakhiraj of mouzah Bidyabullub was under investigation, the respondent caused the land in dispute to be included, but on appellant's

objection 1 poorah, 2 arras, and 10 cottahs were released; and that the documents filed by the canoongoes are not signed by any authority. Appellant also filed, in appeal, a copy of a statement, dated 11th April 1844, showing that 1 poorah, 2 arras, and 10 cottahs had been released as above stated, and a copy of a roobakaree of the collector, dated 14th August 1826, stating that the canoongoe's papers had not been investigated or signed by the collector.

I see no reason to doubt the correctness of the canoongoe's papers, corroborated as they are by the registry of lakhiraj in 1202 and the release of Prankishen of 1219. The statement showing that 1 poorah, 2 arras, and 10 cottahs were released does not show where that land is situated; and nothing would have been easier than for the appellant to have filed a copy of the objections he urged when he got the 1 poorah, 2 arras, and 10 cottahs released when the lakhiraj in mouzah Bidyabullub was under investigation, and the chittas of the lands pointed out as such, and it is singular how he can claim the whole of the land in dispute as appertaining to dag 5 of his lakhiraj, while in the spot in dispute it is recorded in the map of the ameen deputed by the judge that the lakhiraj of Kalleechurn is within the boundaries of the lands in dispute and of which appellant took no notice in the lower court. Accordingly I see no reason to interfere with the decision of the principal sudder ameen, which is affirmed with costs.

THE 3RD APRIL 1850.

No. 16 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen, dated the 6th March 1849.

Golucknath Chowdhry, (Defendant,) Appellant,

versus

Dokul Singh, jemadar, (Plaintiff,) Respondent.

RESPONDENT sued to recover rupees 738-3 on a bond. Appellant did not appear till after order for *ex parte* trial, viz., the 8th August 1848, when he urged as plea for delay in filing his answer that he had gone to Moorshedabad, and only returned very lately, and in proof thereof adduced two witnesses, one of whom stated he had gone with appellant to Moorshedabad. The principal sudder ameen rejected the excuse, as the witnesses were low persons and not worthy of credit, and decreed the sum; in which decision I concur, for appellant, in his petition, did not state precisely the day or month when he went to Moorshedabad, while his witnesses gave the date and month of his departure and the month of his return.

The appeal is dismissed, and the decision of the principal sudder ameen affirmed, with costs.

THE 3RD APRIL 1850.

No. 17 of 1849.

*Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sud-
der Ameen of Zillah Mymensing, dated the 6th March 1849.*

Ruttungopal Bhadooree and others, (Defendants,) Appellants,
versus

Gopeekaunth Misser, (Plaintiff,) Respondent.

RESPONDENT sued for possession of 4 khadas, 10 pakces, 2 gs., 2 kts., situated in 4 kismuts according to a suham butwara between him and the appellants, and of which he alleged they had forcibly dispossessed him in 1249.

Appellants denied having dispossessed the respondent, and requested a local enquiry might be made. Both parties filed lists of witnesses, but appellants did not adduce their witnesses, and the principal sud-der ameen decreed on the evidence of those on the part of the respondent. Appellant again urges that a local enquiry should have been made, which I consider he is entitled to, for respondent has adduced only one witness to the dispossession of the land in kismut Nobogram, and one of his witnesses, Emamdec, states the appellants dispossessed the respondent of 2 khadas in kismut Phoolbaria, whereras respondent only claims 9 pakces, 2 cowrees, 1 krant in that kismut. The appeal is decreed, and the suit remanded to the principal sudder ameen, to make the necessary local enquiry.

THE 4TH APRIL 1850.

No. 9 of 1849.

*Appeal from the decision of Moulnee Ameerooddeen Mahomed, Officiating
Principal Sudder Ameen of Zillah Mymensing, dated the 18th April
1848.*

Mahomed Jan Khan and others, (Defendants,) Appellants,

versus

Radhamunnee Dossea and others, (Plaintiffs,) Respondents.

RESPONDENTS sued for possession with wasilaut of 15 arras, 10 cottahs, $\frac{1}{2}$ pao, situated in their talook mouzah Charoolea-moolgaon, &c., pergunnah Soosung, alleging it to be in the possession of the appellants, who had failed to enter into engagements with them on issue of notice upon them. Appellants claimed to hold under a kaimnee jumma a baree and 6 arras, 9 cottahs, $\frac{1}{2}$ pao. The officiating principal sudder ameen decreed that the respondents were entitled to receive the jumma admitted by the appellants. The appeal must be decreed, for the officiating principal sudder ameen has decreed what was not sued for. The respondents sued for possession with wasilaut; and the point for decision was whether the respondents, under

the circumstances of the case, were entitled to possession or not. The suit is accordingly remanded for trial of the points in dispute between the parties.

THE 4TH APRIL 1850.

No. 18 of 1849.

*Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sud-
der Ameen of Zillah Mymensing, dated the 6th of March 1849.*

Ramsoondur Doss, (Defendant,) Appellant,

versus

Gourmunnee Dossca, (Plaintiff,) Respondent.

RESPONDENT sued for rupees 476-3-3, principal and interest, balance due on a kistbundee of the 30th Aughun 1245. Appellant denied execution of the kistbundee, stating he was at the time at Govindnuggur, zillah Dinagepore, and that the claim has been set up because he was about to sue respondent for large arrears of rent due from her late husband on account of the farm of the appellant's talook, and that the document is a forgery, because, in the moonsiff's court, on the same kistbundee, respondent had given credit for 20 rupees more paid than she now does, which respondent states was an error of the writer of the plaint.

The principal sudder ameen decreed the sum claimed except 20 rupees, as the kistbundee was proved by two witnesses to it, and three others who were present, and the appellant's two witnesses, boatmen, to prove that he was in Dinagepore, are low persons, who cannot state when he left home or when he returned.

In appeal, it is urged that the two witnesses to the deed are, one a relation and the other her gomashtha, and that two of his witnesses had not been summoned.

On referring to the nuthee, I find that these two witnesses had not been summoned, because appellant had not inserted in the list their father's name. I am not aware of any law which renders it necessary that the parties to a suit should state the names of the fathers of their witnesses. The appeal is decreed and the suit remanded to the principal sudder ameen to summon the witnesses referred to, and then decide the suit on its merits.

THE 4TH APRIL 1850.

No. 19 of 1849.

*Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sud-
der Ameen of Zillah Mymensing, dated the 7th March 1849.*

Rajah Hurindurnarain Rai, (Defendant,) Appellant,

versus

Hurruk Sha, (Plaintiff,) Respondent.

RESPONDENT sued to recover rupees 3,443, principal and interest, on a bond dated 14th Poose 1253, signed by the other defendant, Goluck Chunder Neogee, under a power of attorney for that purpose attested before the principal sudder ameen of Rajshahye from Ranee Bobunmoe, whose adopted son the appellant is, and to whose estate he has succeeded, for the purpose of paying the revenue of the ranee's 7 annas 10 gundahs zemindaree, pergunnah Pookarea; that the money rupees 3,000 was lent on the last day for the payment of revenue, paid into the collectorate, and the collector's dakhila for it given to him. Goluck Chunder Neogee admitted having executed the bond and received the money as above stated.

Appellant replied that he was not liable for any debt of his mother's, that the suit has been got up in collusion with Govind Pershad Khan and Bejaye Govind Khan, his nephews, with whom he is at enmity, and his mother's omlah, as he has discharged them, and the respondent, who was her treasurer, as they have failed to give in their accounts; that at the date of the bond his mother was ill at Moorshedabad, and if the mooktearnamah was a true one it would have been attested there; that she could not write, and that her seal was in the charge of her grandsons; that the mooktearnamah would have been in the name of her sudder mooktar, and not in that of the Khan's naib's brother, Goluck Chunder Neogee. Respondent replied that the Ranee lived at Pootea, which is only one day's journey from Moorshedabad, and that she was sometimes at one place and sometimes at another; that Goluck Chunder Neogee was the Rance's mofussil naib, whose business it was to collect the rents, and pay the revenue, and denied being the Rance's treasurer.

The principal sudder ameen decreed the sum claimed, as it was proved by the copy of the mooktearnamah signed and sealed by the Ranee, of the 2nd Poose 1253, filed in the collectorate, and attested by the principal sudder ameen of Rajshahye, and by the bond and dakhila of the 14th Poose 1253, and three witnesses to the bond, of whom Brijkishwur and Sumboonath are respectable persons, and were before the sudder omlah of the ranee, and of whom Brijkishwur is now in the service of the rajah defendant, and Sumboonath in that of his nephews, that the ranee borrowed the money as stated, and that as it was paid in for the revenue of the estate to which the appellant has succeeded he is liable.

In appeal, it was urged that respondent did not adduce any proof of the mooktearnamahs, and although appellant filed a list of the witnesses to it, and the principal sudder ameen ordered him to swear to the necessity of their evidence, and his mooktear presented a petition to be allowed to do so, he was not allowed to do so; and that Sumboonath and Brijkishwur are both in the employ of the Khans who are at enmity with him, and the latter was not in his employ at the time the debt was contracted, and that his witnesses have proved that the respondent was the Ranee's treasurer. The first objection I do not consider a valid one. On the 19th February the appellant was directed to swear to the necessity of the witnesses to the mooktearnamah in three days; but his mooktear did not attend to do so till the 7th March, the day on which the suit was decided. No objection can be raised to the evidence of Brijkishwur, on the grounds that he was not then in the employ of the appellant; for he was in that of the Ranee and now in that of the appellant, which would not be the case if he had combined with others to cheat the appellant; neither, for the same reason, would the other defendant Goluck Chunder Neogee be in appellant's service as appears from the evidence of Harroo Peada, one of appellant's witnesses. The only evidence adduced that the respondent was the Ranee's treasurer is that of two peadas which is quite insufficient, neither are they worthy of credit, for one of them, Golab Khan, who said he had seen money paid to the respondent on account of the Ranee, on being asked how old the respondent was said 60 or 70. Respondent was in court, and I should say he was about 40. In appeal, appellant has filed a copy of a decree of the Sudder Dewanny, dated the 5th September 1842, in which there is a translation of a bewustah, to prove that appellant is not liable for his mother's debts, which proves just the contrary, a debt contracted to save the property being stated therein as one of those for which the heir is liable. The decision of the principal sudder ameen is affirmed, and the appeal dismissed, with costs.

• THE 10TH APRIL 1850.
No. 53 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 12th May 1849.

Kalee Kishwur Rai Chowdhry, (Plaintiff,) Appellant,

versus

Hiurkunt Sein, Chundrabullee Dossea, Kaleekaunt Sundial, wife and minor son of Sumboochunder Sundial, and Komullochun Moiter, (Defendants,) Respondents.

APPELLANT states that, by a private arrangement between his grandmother, Naraine Dibia, and Juggutesseree Dibia, his mother, of the 4 annas zemindaree, pergunnah Mymensing and Zuffershahye,

he held 1 anna 10 gundahs, and the two ladies 1 anna 5 gundahs each, to which he has succeeded on their death, and that, in execution of the decree of Chundrabullee Dossea, against the Sundial respondents, 8 khadas 4 pakees in mouzah Kendooa were sold as the lakhiraj of the Sundials, notwithstanding his objections that it was part of his estate, and purchased by the respondent Hurkaunt Sein, who accordingly dispossessed him; and he now sues for possession with wasilaut; that the admission of Kumullochun Moiter, respondent, mookhtear of Naraine Dibia, during her absence at Benares, was a collusive one with the decreed. Hurkaunt Sein, in his answer, alleged that before his purchase the whole village was attached by the collector, and a map filed by the koorukdar, which shows that the Sundials whose house is there also have lakhiraj in that village. Appellant denied that the village was ever attached.

The principal sudder ameen dismissed the claim as appellant had given no proof of the land being khirajee, or of previous possession, such as kuboolcuts, chittas, and jumma-wasil-bakees and only the evidence of four witnesses, and upheld the lakhiraj, as it appeared from the map of Mahomed Zukec, of the 2nd Sawun 1246, the sudder ameen's roobakaree of the 10th December 1841, the admission of Naraine Dibia, and the respondents' six witnesses, that the Sundials got a grant of the lakhiraj at the time of the marriage of Naraine Dibia, and have had possession all along; and though the collector reports that the lakhiraj is not registered, it appears from the copy of the urzee of the respondent, Hurkunt Sein, dated 24th Chyte 1255, that he applied for a copy of the nuksha, No. 597, of Kendooa, in the name of Bulram Sundial, ancestor of the Sundials, respondents, as recorded in the suit of the same plaintiff *versus* Sheebshahye Tewaree and others, on which the mohasiz reported that the taidads were not found in 1222. The fact was noted the list, among which stated not to have been found is No. 597, in the name of Bulram Sundial, from which it would appear that it had been filed and since lost.

In appeal, it was urged that the proof of appellant's possession is the fact of there being no lakhiraj, and his witnesses are the ryots and cultivators of the land. I concur in the principal sudder ameen's opinion that appellant has not proved previous possession, not being satisfied with the evidence of the witnesses unsupported by any documents; but on the other hand there is no proof whatever that the land in question was granted as lakhiraj before the decennial settlement, for the name of Bulram Sundial being attached to No. 597, in the list of taidads in the collectorate, with the remark that the taidad was not found, proves nothing, not even the village or villages in which the land mentioned in the missing taidad is situated. The decision of the principal sudder ameen is accordingly reversed. The appellant not having proved previous possession is not entitled to wasilaut, but in conformity with a decree of the Sudder Dewanny, dated 27th February 1837, Asad-ol-

lah Cazee, appellant, *versus* Sumboochunder Chowdry, respondent, to which appellant has referred, and a copy of which has been ordered to be filed with the case, it is ordered, that the purchaser enter into settlements with the appellant, within six months from this date, otherwise the appellant will be put into possession of the lands in dispute. Costs in proportion to the claim decreed, to be charged to the respondent.

THE 15TH APRIL 1850.

No. 20 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 12th May 1849.

Seebdial Tewaree, (Plaintiff,) Appellant,

versus

Ram Soondree Dibia Chowdryne, (Defendant,) Respondent.

APPELLANT sued on a bond, dated the 15th Chyete 1251, to recover rupees 945-14-9, principal and interest, the respondent having borrowed Sicca rupees 700, on that date to pay the revenue of her estate, the sale of which was fixed for the 16th Chyete. Respondent denied having borrowed the money, or come to Nusseerabad where it is alleged the bond was executed, that the appellant instituted two other suits against her on bonds on the same day, and that if she had not paid the sum due on the first bond he would not have lent her money without registering the bond, and that she suspects the suits have been instituted at the instigation of Tareenee Kaunt Lahoree, a shareholder with whom she is at enmity. Appellant replied that respondent herself signed the bond here in a boat, that she has had transactions with him before, and that she has borrowed money from Sheeb Doss Tewaree and others, who have obtained decrees against her.

The principal sudder ameen dismissed the claim, because, of the three witnesses to the bond, one of them knew nothing about, and the other two are inhabitants of Lucknow, but now of Sherepore and Nusseerabad, of whom Shamadun said, he had come into Nusseerabad to carry on a case, and Omurnath that he was going about selling cloth, when the appellant called them from the road to be witnesses, and on going on board, the respondent took up the purdah and signed and delivered the bond before them, and that she was young; but being a respectable zemindar, it is highly improbable that she would have lifted the purdah and exposed herself, and if the transaction was a true one her mooktear and other respectable witnesses would have been present. Although called for, no proof of the money having been paid for revenue was adduced, and those witnesses state that they ascertained who she was from Tareenee Kaunt Lahoree, who was also at the ghaut, while it appears from copies of the petitions of Anundee Ram and Tareenee Kaunt failed by respondent, that she has disputes with the latter.

In appeal, it was urged that the two witnesses have long been resident in this district, and were made witnesses because zemindars, who borrow money, often get witnesses to bonds to depose in their favor, and that no proof of payment of the money for revenue had been called for. I concur in the view the principal sudder ameen has taken of the case, for, exclusive of the improbability of a respectable Hindoo female coming before, or lifting the purdah to strangers, it is equally improbable that the appellant should not have gone to the respondent's boat ready prepared with witnesses instead of calling them from the road, besides which one of them says that the purdah extended only half across the boat and so saw the respondent execute the bond, while the other says the purdah was lifted, which would have been unnecessary. The decision of the principal sudder ameen is affirmed, and the appeal dismissed, with costs.

THE 15TH APRIL 1850.

No. 27 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mynensing, dated the 12th April 1849.

Scebdial Tewaree, (Plaintiff,) Appellant,

versus

Ram Soondree Dibia Chowdraine, (Defendant,) Respondent.

APPELLANT sued to recover rupees 1,841-2-4, on a bond dated 4th Assin 1250, for Sicca rupees 842 lent to the respondent, whose estate was advertised for sale on the 13th Assin, giving credit for 50 Sicca rupees 12 annas paid by Rajkishwur Shome, and Sicca rupees 77-12 paid by Sumboonath, through Hurchurn Surmah, on the 6th Chyte 1250 and 13th Poose 1251. Respondent denied having borrowed the money, or any knowledge of Rajkishwur Shome, and that Hurchurn Surmah had been her servant, but had run away last year, and gone into the service of Tareenee Kunt Lahoree, a shareholder, with whom she has disputes, who will have got up this suit through his mahajun, the appellant. Appellant replied that the respondent's estate was about to be sold in satisfaction of the decree of Mahomed Tuckee, and that the sum due was paid with this money, that Rajkishwur is her servant, and that Hurchurn Surmah was her sudder mooktear. Respondent denied that her estate was advertised for sale for the decree of Mahomed Tuckee, and that Radanath Aitch, one of the witnesses to the bond, is a dependant of Ramlochan Turfdar, a servant of the appellant, and the other two are appellant's servants, and denied that the Aitch was ever in her service, or having had any previous transactions with the appellant, also denied that Hurchurn Surmah was her sudder mooktear.

The principal sudder ameen dismissed the claim, not crediting the evidence of the witnesses to the bond that the respondent, a respectable Hindoo female, had come before the purdah, signed the bond, and talked to them, and that her mooktear or some one else would have before made arrangements for the loan with the appellant, who does not say any such arrangement was made; that Radanath Aitch said he had been in respondent's service for one or one and half month, as a jureeb ameen, and so knew her, and therefore went to see her when she came here, while in a suit before the moonsiff on a bond of the same date he said he had been in attendance at her house in 1248 and 1249 as an omedwar, and so knew her, and on her coming here went in hopes of getting a jureeb chittee; that Bulram Sing is a peada of the appellants, and that the witnesses said nothing in the moonsiff's court about this transaction, which is singular; and that Kishwur Sing said he knew the respondent from having sold her cloth, but it is improbable such a person as respondent should have appeared before him; lastly, it is stated in the bond that the money had been paid in for revenue, and though proof was called for, none was adduced.

In appeal, it was urged that it is the custom of female zemindars to come before the purdah in this district, that on the 5th Assin he and Ramsunkur Boomeek paid the money in for the revenue of respondent's estate, that the loan was arranged by her brother, Sumboonath, and that no mention of this transaction was made by the witnesses in the case before the moonsiff as it was unnecessary. The appellant also filed a copy of the daily book of the collectorate, showing that Company's rupees 842 had been paid in on the 5th Assin 1250 on account of the respondent's estate, by appellant and Ramsunkur Boomeek. The evidence of Radanath Aitch is not worthy of credit, on account of the very different and improbable reasons he assigns for having seen the respondent in this case and in that before the moonsiff. Bulram Sing is a peada of the appellants, and therefore not an unbiassed witness; and as neither he nor Kishwur Sing can write, they are not likely persons to be witnesses to a bond, nor are these two worthy of credit, for, in the case before the moonsiff, Kishwur Sing said he only saw her hand and asked a servant who she was, while Bulram Sing says she lifted the purdah and that he saw her. With regard to the copy of the daily book, in which it is stated that rupees 842 was paid into the collectorate by the appellant and another for the revenue of the respondent's estate, it is sufficient to observe that, if such a sum was really paid in by the appellant, it cannot be the money he lent her the preceding day, for appellant has nowhere stated that he received back the money for the purpose of being so paid in.

The appeal is dismissed, and the decision of the principal sudder ameen affirmed, with costs.

THE 16TH APRIL 1850.

No. 21 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 3rd April 1849.

Gourpershad Pall Shaha, Rada Jhalla, and others, (Defendants,) Appellants,

versus

Ramsing Shaha, (Plaintiff,) Respondent.

THE history of this case is given in my decision of the 29th May 1848, when the suit was remanded for trial on the appeal of one of the present appellants, Gourpershad Pall, with directions to take the evidence of the witnesses already named by the appellant and to call upon the defendant Kaloo Manjee for proofs of his defence. The principal sudder ameen decreed the claim against all the defendants except Kaloo Manjee, as it appeared from the evidence of the witnesses, copy of the complaint in the criminal court which was dismissed on the 3rd January 1845, and the receipt filed by Kaloo Manjee, that the appellants had attacked the boat which the respondent had sent loaded with sursoo and sold the cargo and took the money for road expenses, and that the appellant Gourpershad's defence is not proved, because it is unlikely that the respondent's small boat could have sunk his large one, and that he would not have allowed the manjee, who had no right to sell the sursoo, to go off with his boat, on receiving only 700 rupees of the sum claimed by him; and although Gourpershad had frequently been ordered to take steps for the attendance of his witnesses, he had not done so.

In appeal, Rada Jhalla and others urged that being boatmen they had been at various places, and had received no intimation of the suit; and Gourpershad urged that if he had taken the property by force he would not have given a receipt, but said nothing in regard to the cause of the non-attendance of his witnesses. In regard to the appeal of Rada Jhalla and others, no notice can be taken of it as the istihar was affixed to their houses, and they have not stated from and to what period they were absent. The appeal of Gourpershad Pall must be dismissed, as he has failed to take the necessary steps to cause the attendance of his witnesses, without whose evidence there is no proof of his defence, beyond the ikrar of Kaloo Manjee. Accordingly, the decision of the principal sudder ameen is affirmed, and the appeal dismissed, with costs.

THE 16TH APRIL 1850.

No. 40 of 1849.

*Appeal from the decision of Pundit Nurhurree Seromonee, Principal
Sudder Ameen of Zillah Mymensing, dated the 12th May 1849.*

Seebdial Tewarree, (Plaintiff,) Appellant,

versus

Ram Soondree Dibia Chowdryne, (Defendant,) Respondent.

APPELLANT sued to recover, principal and interest, rupees 863-12, on a bond for rupees 625, dated 13th Poose 1251, stating the money was lent to respondent at Kalleepore. Respondent denied that appellant went himself to Kalleepore and lent her the money; and that the suit has been instigated by Tarcenee Kaunt Lahorce, a shareholder with whom she is at enmity.

Appellant replied that he had paid the money to her himself, and that it was borrowed for the purpose of paying the revenue, as the bond would show.

The principal sudder ameen dismissed the claim on account of the discrepancies of the four witnesses, all deshwallcees, in regard to the person who counted the money, and to whom it was given, and that it is very improbable that a young Hindoo female, a zemindar, should come before strangers, or that she should, as one of the witnesses says, have purchased cloth from him herself, and as regards the copy of the daily book of the collectorate, showing that rupees 928-3-6 had been paid in on account of the revenue of the respondent's estate, it will not benefit the appellant, as the place where the money was lent is nearly 2 puhurs from the collectorate, while the witnesses say the money was sent at $1\frac{1}{2}$ puhurs of the day remaining.

In appeal, it is urged that one of the witnesses had long been a servant in the family and so had seen the respondent from childhood, that another is a servant of her shareholder, Shamakaunt Lahoree, and used to see her when she went there; that another was a mahajun of the place, and so had known her for 5 or 6 years, and the last had sold cloth to her; that in regard to the distance, revenue is received for two or three days before the last day long after dark. The principal sudder ameen has not stated how he ascertained that Kalleepore is 2 puhurs from the collectorate, and from what I have heard I believe the distance to be 10 or 12 miles, and therefore the money could easily have been paid in before sunset, if sent by a man on foot, and still more so, if sent on an elephant; but the fact of revenue having been paid two days after the date of a bond is no proof of the genuineness of that bond. I am not satisfied with the evidence to the bond. Two witnesses say they accidentally met the appellant, who asked them to be witnesses; the other two were accidentally present, for they say they went there, having transactions with

respondent's omlah, so that it would appear the appellant went unprepared with one witness. These two last witnesses say they are mahajuns, and one says he has dealings with high and low : if such be the case, it is more likely respondent would have applied to them for a loan. The witness Seebpershad Misr says respondent signed the bond behind a tattee, of which no mention is made by the other witnesses, who all say she sat openly before them, and adds, "on my asking her she said she had signed it, and I saw her sign it." If he saw her sign the bond what occasion was there to ask her if she had signed it. He then says, "I know something of her signature;" but afterwards said, "how should I know, not knowing Bengalee?"

The appeal is dismissed, and the principal sudder ameen's decision affirmed, with costs.

THE 18TH APRIL 1850.

No. 22 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 4th April 1849.

Kalleekishwur Roy Chowdhry, (Plaintiff,) Appellant,

versus

Sheebshahye Tewarce, (Defendant,) Respondent.

Doorgachurn Surma, Kalleekunth Surma, wife and minor son of Sumbhoo Chunder Surma, (deceased,) and Kummullochun Moitre, Defendants.

APPELLANT states that by a private arrangement between his grandmother, Narainec Dibia, and his mother, Juttissuree Dibia, of the 4 annas zemindaree in pergunnahs Mymensing and Zuffershahye, he held 1 anna 10 gundahs, and the two ladies 1 anna 5 gundahs each, to which he has succeeded on their death, and now sues to obtain possession with wasilat of 4 arras in Shalechur, 6 arras in Telatea, 6 arras 12 cowrees in Nalma, 6 arras 7½ cottahs in Kandegram, and 13 arras in Rajibpore, pergunnah Mymensing, of which the Tewarce has dispossessed him, having purchased the land in question on the 12th Kartick 1250, as the lakhiraj of the Sundials, in execution of the decree of Chundeeden Tewarce; that the land is khirajee, as he stated when called upon by the court to report whether the Sundials had any lakhiraj in his estate; and though a kyfeet was only called for regarding mouzahs Ramgopalpore, Rajibpore, and Nalma, the defendant Kummullochun, mookhtear of his grandmother, while she was at Benares, in collusion with the decreedar, reported that the Sundials held the lands in dispute, and, notwithstanding the collector reported that the lakhiraj was not registered in the collectorate, the rights and interests of the Sundials therein were sold.

The Tewaree, who alone filed an answer, replied that the lands had been granted as lakhiraj to Roodrooram Sundial, ancestor of the Sundials, and uncle of Narainee Dibia, on her marriage to appellant's ancestor Kishen Kishwur Rai, before the decennial settlement, by whom and his successors the lands have been held without dispute up to his purchase, and that the lands are mentioned in the canoongoe's papers, filed in 1227, and as proof of possession by the Sundials. Chundeedeem Tewaree having got a farm of the lands from him, and held it for 3 years, they dispossessed him, on which he sued and obtained a decree against them.

Appellant replied, and denied that the lands were given as lakhiraj to the Sundials at the time of his grandmother's marriage, who is of a different family, and that it was the komar of the Sundials, and he did not give in any papers to the canoongoes.

The principal sudder ameen upheld the claim to lakhiraj, as the appellant had not proved possession as part of his zemindaree, nor has he stated whether the Sundials ever paid rent for it or not: but that it appears from the canoongoe's papers of 1227 to be lakhiraj of Bulram Sundial, ancestor of Sundial defendants, and also that appellant's grandmother admitted them to be lakhiraj, as shown by the roobakarce of the sudder ameen of the 10th December 1841; and that as long as the Sundials were in possession the appellant did not disturb them, but, now the lands have been sold, he has sued the purchaser for their advantage.

I concur in the principal sudder ameen's view that the appellant has not proved previous possession, no documents whatever in proof of it having been adduced, and it may be that appellant sues for the advantage of the Sundials; but how the principal sudder ameen upholds these lands as lakhiraj granted before the decennial settlement, I am at a loss to understand. No sunnud or copy of the taidad has been filed, and the collector reports that no such lakhiraj lands have been registered. The principal sudder ameen adduces, as a proof that the lands are lakhiraj, the canoongoe's papers of 1227, which they cannot be, but if they were valid proof thereof, they would only affect the land in one village, viz. Shaleehur, out of the five included in the suit; neither does it appear how he ascertained that Bulram Sundial was an ancestor of the Sundial defendants. The decision of the principal sudder ameen must be reversed. The appellant, not having proved previous possession, is not entitled to wassilat; but in conformity with a decree of the Sudder Dewanny Adawlut, dated 27th February 1837, Asadoollah Cazee, appellant, *versus* Sumbhoo Chunder Chowdhry, respondent, to which appellant has referred, and a copy of which has been ordered to be filed with the case, it is ordered, that the purchaser enter into settlements with the appellant, within six months from this date, otherwise the appellant will be put into possession of the lands in dispute. Costs in proportion to the claim decreed, to be charged to the respondent.

THE 18TH APRIL 1850.

No. 23 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 3rd April 1849.

Lukheekaunth Doss, (Defendant with others,) Appellant,

versus

Govindram Doss, (Plaintiff,) Respondent.

RESPONDENT states he purchased 2 annas of mouzah Raneegaon, &c. from Gungaram Doss and Nubkishwur, in which is the baree of appellant and Okyram Doss, 8 cottahs, and sues to obtain possession thereof.

Appellant claimed the land in dispute under a deed of sale from Ramjeewun Doss, and objected that two persons had been made defendants for the purpose of preventing their giving evidence on his side, as they were witnesses to his deed of sale, on which the moonsiff struck their names out of the list of defendants and took their evidence; and on the case being transferred to the principal sudder ameen, the appellant having claimed the land as lakhiraj, he, without noticing this illegal proceeding, passed a decision in favor of respondent.

The decision of the principal sudder ameen must be reversed, and the respondent nonsuited, having fraudulently, and without valid reason made those two persons defendants for the purpose of preventing their giving evidence on the part of the appellant.

THE 19TH APRIL 1850.

Nos. 24 and 26 of 1849.

Appeals from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 5th April 1849.

Kumla Dassia and Nooroo Newgee *alias* Radagovind Newgee,
• (Defendants,) Appellants in No. 24,

Gournath Surma, (Defendant,) Appellant in No. 26,

versus

Kashisseree Dibia, (Plaintiff,) Respondent.

RESPONDENT, purchaser, on the 5th Assin 1247, for arrears of revenue of talook No. 276, kismut Maisbag, pergunnah Hoshun-shahye, sued to obtain possession of 4 arras, 15 cottahs, 3 paos, 10 cowrees, the share of 13 arras, 4 cottahs, 3 paos, appertaining to his talook, of which the appellants and others had withheld possession, stating that the lands of his and No. 277 and No. 278 are ijmalec.

Appellants in No. 24 replied that respondent, on his purchase, took possession of whatever they held of No. 276, and that Sumboonauth Chuckerbuttee, purchaser of No. 277, has dispossessed them of what they held in bund Pingnachur and Shan Kola bund, and that the land claimed in Newgeebaree bund is included in their resumed lakhiraj, for which they have entered into a perpetual settlement with Government.

Appellant in No. 26 replied that the lands of the three talooks are ijmalee, but, by a private arrangement, the proprietors of them have collected the rents from separate ryots, and at the close of the year balanced their accounts, therefore they have not dispossessed the respondent.

The principal sudder ameen decreed in favor of respondent, because it had been proved by the respondent's witnesses, that the appellants had not given the respondent possession, and no proof of appellant in No. 26's answer was brought forward, and that the answer of appellants in No. 24 is a mere excuse, as the chitta filed by them, signed by the collector, does not show where the land is, or for what quantity the settlement was made, and their witnesses are not worthy of credit.

Appellants in No. 24, in appeal, have urged that they were unable to file the remaining chittas on account of the expense; but have now done so. The chittas are signed by the collector, and show that some land in kismut Maisbag was resumed, and it is recorded on the back of them, that copies on plain paper have been granted to the appellants, because they have entered into a perpetual settlement for the resumed lands. This appeal is accordingly decreed, and the suit remanded to the principal sudder ameen to make a local enquiry, to ascertain whether the lands claimed by respondent are included or not in the lands for which the appellants have entered into settlements with Government.

Appellants in No. 26 urge that they had given a list of witnesses to their vakeel, but as their fathers' names were not entered on it, they had gone to ascertain them, and when they returned they found the suit had been decided before. This excuse, I consider, is a frivolous one, for not only was their answer to the plaint filed with great delay, but they have not stated when the list of witnesses was given to their vakeel, and, if there was any truth in their assertions, they would have stated in their answer from what ryots they and the respondent made collections separately, and adduced documents in proof thereof, and of the alleged settlement of accounts at the close of the year. The principal sudder ameen's decision as regards this appeal is affirmed, with costs.

THE 20TH APRIL 1850.

No. 25 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 5th April 1849.

Brijbiswas, (Defendant,) Appellant, and others, Defendants,
versus

Shamram Sircar, (Plaintiff,) Respondent.

RESPONDENT states there is a talook in mouzah Jooramgram, in the name of Sheebchurn Dutt, in the 2 anna zemindaree of the rajas, defendants, at a jumma of Sicca rupees 14-7, which he purchased on 5th Bhadoon 1250, from that person, and caused his name to be entered in the rajas' sherishta, and obtained sunnuds from them, and, disputes arising with appellant and his brother, Gour defendant, he sued under Act IV. 1840, when the principal sudder ameen, on the 7th Maugh 1250, gave possession to the appellant and Gour defendant, on the grounds of the darogah's report and the petitions of the ryots, but the darogah was only ordered to stop an affray, and if it was true that the appellant's brother, Nubkishwur, got a pottah in his own and his relative Ramkishen's name on the 16th Aughun 1239, why was it not recorded in the zemindar's sherishta? and now sues to cancel the order under Act IV., and for possession, with wassilat.

Appellant and Gour defendant replied that it was obtained as above stated, and that they repeatedly applied to the rajas to register the talook, but they, in collusion with the respondent, refused to do so, for the purpose of obtaining a higher rent, as the true jumma is only Sicca rupees 6.

The rajas defendants admitted having registered the name of the respondent as the purchaser and granted him sunnuds, but allege the jumma is variable.

The principal sudder ameen decreed in favor of respondent, as the kuballa, sunnuds, dakhilas, kuboolouts, copies of the Dutt's petitions for transfer of the talook to the respondent, and two witnesses to the kuballa prove that the talook was purchased by him, possession obtained, and name recorded in the zemindar's sherishta, while the appellant has adduced no proof of the jumma stated by him, or of having paid the rent, and if Sheebchurn was alive 11 or 12 years after they obtained the talook from him, why was it not entered in the zemindar's sherishta? and the only witness to their sunnud is their brother Kasheenath Ghose.

In appeal, it was urged that there are four witnesses besides the writer's names on the respondent's kuballa, and that only the evidence of one of them, Ramchunder, a low person and a servant of the respondent, has been taken, and that of Omakaunt Singh and Frankishen Dutt, respectable persons, not in the foudjaree or civil court, and that the two persons, copies of whose evidence in the

foujdaree he has filed, one is a bearer and ryot of respondent, and the other a dependant of his, and that Gungaram and Sheikh Pechoo knew nothing about respondent's purchase or dispossession, and that the copies of the petitions of Sheebclurn and the sunnuds are forgeries given by the rajas defendants, who have caused this suit to be instituted, and that appellant has paid rent through the munduls, and in proof thereof filed dakhilas signed Sree Syce, as is the custom of the pergunnah, that Kasheenath Ghose is not a relative, and that the principal sudder ameen has not noticed his objection that the ryots were improperly made defendants.

As the ryots chose to file petitions in the foujdaree, supporting appellant's claim, the respondent was fully justified in making them defendants. The appellant has incorrectly stated that Kasheenath Ghose is no relation of his, for he has himself stated he is a cousin, and I cannot believe appellant's assertion that Ramchunder is respondent's servant, for, after stating in his deposition that he was unconnected with either party, he was not questioned on that point. Putting aside the copies of the depositions of the two persons who gave evidence to the kuballa in the foujdaree, for if it is proposed to prove the kuballa by their evidence it ought to have been taken in the civil court, there remain one witness to the kuballa and one witness who was present when it was executed on the part of the respondent, and both unconnected with him; on the appellant's part there is one witness, Kasheenath Ghose, a relative, to his sunnud, and to possession, one of his own peadas and one of Kasheenath's. I therefore consider the evidence on the part of the respondent, corroborated by the rajas' sunnuds and dakhilas, more worthy of credit than that of the appellant. The decision of the principal sudder ameen is affirmed, and the appeal dismissed, with costs.

ZILLAH NUDDEA.

PRESENT: J. C. BROWN, ESQ., JUDGE.

THE 23RD APRIL 1850.

Case No. 76 of 1849.

Regular Appeal from a decision passed by Baboo Ramlochun Ghose Rae Buhadoor, Principal Sudder Ameen of Zillah Nuddea, on the 23rd of July 1849.

Berjodoollubh Mookerjea, Juggutdoollub Mookerjea, and Banee
Madhub Bonnerjea, (Defendants,) Appellants,

versus

Kishen Chunder Bonnerjea, (Plaintiff,) Respondent.

THE plaintiff stated in his plaint that he purchased an estate (talookah) named Srinuggur, the sudder jumma of which was Company's rupees 125, 10 annas, and 8 gundas, also the proprietary right in the Meer Cooly fishery for the sum of rupees 2,800, on the 2nd of Bysack 1252 B. Æ., from Ramlal Dutt and Seetahram Dutt, and the title deeds were duly executed, and that the lands of Srinuggur were scattered and interspersed with those of the adjoining estate of Jooranpoor, which was owned by Banee Madhub Bonnerjea, Juggutdoollubh Mookerjea, and Birjodoollubh Mookerjea, (now appellants,) and that they had, on account of former enmity, declared that certain lands belonging to Srinuggur, and in the occupancy of Mr. Macleod of the Cootooreah indigo factory, belonged to the Jooranpoor, and on the 5th of Sawun of the same year lodged a complaint before the deputy magistrate of Cutwa against his (plaintiff's) son, named Pran Chand Bonnerjea, and others, for cutting and carrying away the indigo, which had been cultivated by them on their Jooranpoor lands, which suit was decided in their favor. That it had been proved in a former suit, which had been decided

by the principal sudder ameen, that 300 beegahs 13 cottahs of land belonging to Srinuggur was included in a kubooleut executed by Ramdhun Chatterjea on the part of Mr. Deverell in favor of Juggut-doollubh and others, and he (the plaintiff) on account of the order passed by the deputy magistrate, and the intrigues of Banee Madhub and others, had not yet been able to obtain possession of the estate he had purchased. He therefore sued for obtaining possession according to the detailed statement at the foot of his plaint, and also for the mesne profits for the time he had been kept out of his rights.

The defendants answered at great length, denying the plaintiff's claim; but there is no occasion to enter into the rights of the case, as the principal sudder ameen's decree is so faulty that the suit must, under the provisions of Clause 2, Section 2, Regulation IX. 1831, be returned to him for re-investigation.

The principal sudder ameen, instead of investigating the case himself, referred it, under the provisions of Regulation XVI. 1793, to arbitration, and the parties entered into bonds to abide the award of the arbitrators passed upon due consideration of the pleadings and after deliberate investigation.

The arbitrators delivered their award in five months, but it was without reference to the lands claimed and specified by the plaintiff in his plaint. It appears that, not finding the landmarks to correspond with those detailed by the plaintiff, they awarded him 370 beegahs 9 cottahs of land, but not agreeing with the boundaries according to which he sued, or in other words decreed certain lands to him which he had not claimed; and this award the principal sudder ameen confirmed, notwithstanding a protest entered by the appellants to the adoption of it. He has stated that, under Section 9, Regulation XVI. 1793, he was not competent to set aside the award of the arbitrators, as neither gross corruption nor partiality had been proved against the arbitrators, and he therefore confirmed their act; but it appears to have escaped his notice that in the award certain lands were included, which were not mentioned in the plaintiff's plaint.

• If his plaint was wrong he should have been nonsuited, but it is contrary to all law and justice to decree to any one property which he did not sue for. It is for a plaintiff to prove what he claims as his, but it is not for a judge or arbitrator to say that the plaintiff has made a mistake in claiming certain property, and then to give him a decree for other than what he sued for.

Ordered, that the case be remanded to its former place on the file of the principal sudder ameen, and that he, or, (if the case is again referred to arbitration,) the arbitrators, decide upon the plaintiff's claim, and not award to him land which he never sued for.

The value of the stamp for preferring the appeal is to be returned to the appellants; and any costs they may have incurred will be awarded as may appear just, when the suit is finally disposed of.

THE 24TH APRIL 1850.

Case No. 100 of 1846.

Regular Appeal from a decision passed by Baboo Ramlochan Ghose Rai Bhadoor, Principal Sudder Ameen of Zillah Nuddea, on the 15th of May 1846.

Prankishen Pal Chowdhree and others, (Plaintiffs,) Appellants,

versus

Messrs. Hills and White and others, (Defendants,) Respondents.

THE plaintiffs took the talook of Assannuggur, &c., in puttunee, at the close of 1244 B. Æ., the defendants having 4 beegahs in their occupancy at a fixed rate of sixteen rupees per annum, but they found by measurement in 1246 that the defendants had 34 beegahs 7 biswas in their possession. They had also lands in cultivation in other villages in the talook amounting all together to 117 beegahs and 3-4ths, the rent of which for the years 1247 to 1250 amounted to 1,826 rupees, 5 annas, 4 gundas, principal and interest included.

The defendants admitted the plaintiffs' right to claim rent only for a portion of the lands, and at a lower rate than that demanded.

The principal sudder ameen has made every necessary investigation of the plaintiffs' claim. On the 4th of July 1845, when he held the proceeding directed in Section 10, Regulation XXVI. 1814, he put several questions to the plaintiffs' vakeel, which only proved the insufficient grounds upon which they had brought their suit. The plaintiffs failed entirely to prove their claim, nor could they account for having allowed the defendants to keep the lands in their possession for six years without making any arrangement for paying the rent. The defendants having acknowledged being indebted to the plaintiffs, the principal sudder ameen gave a decree against them for 307 rupees, 2 annas, and 3 gundas, besides interest.

The plaintiffs, dissatisfied with the award, have appealed, but have only recapitulated what they wrote before, and have given no good or sufficient reason for an interference with the principal sudder ameen's decree. I am of opinion that the said decree is perfectly just and legal; and no satisfactory reason being advanced for its reversal, I confirm it, and dismiss the appeal, with full costs.

THE 25TH APRIL 1850.

Case No. 47 of 1847.

Regular Appeal from a decision passed by Baboo Ramlochan Ghose Rai Buhadoor, Principal Sudder Ameen of Zillah Nuddea, on the 23rd of February 1847.

Prankishen Pal Chowdhree and others, (Plaintiffs,) Appellants,

versus

Messrs. Hills and White and others, (Defendants,) Respondents.

THIS suit was instituted by the plaintiffs, for the recovery of Company's rupees 1,445, 13 annas, 17 gundas, 2 cowries, on account balance of land rent due to them.

The lands were not situated in one village but in Rai Ghatta Mohutpore and others.

The defendants admitted the plaintiffs' claim according to the statement contained in their answer to the plaint, to the extent of 772 rupees, 13 annas, 12 gundas, 3 cowries, and repudiated the remainder.

The plaintiffs exhibited in support of their claim the measurement papers of their villages and witnesses, and the principal sudder ameen deputed an ameen to make local investigations, and to measure the lands pointed out by the plaintiffs.

The plaintiffs, not finding the measurements and the local investigation of the ameen conducted in consonance with their views, presented petitions to the principal sudder ameen, making complaints of the way in which the ameen was conducting his proceedings; and when the result of his investigation was submitted by the ameen, the plaintiffs again objected to the report, as being drawn up with partiality in favor of the defendants, and not having done their claim justice.

However, on being subsequently called upon to deposit the fees for the ameen to be deputed to make some further investigations relative to some adverse claims that had been set up, they declined compliance, stating that their claim was fully established, and there was no occasion to make further enquiries, thereby tacitly implying that the proof on their part was ample, and that they waived their previous objections.

The principal sudder ameen, after a patient investigation, recorded his reasons in full, reducing the plaintiffs' claim to Company's rupees 1,141, annas 8, gundas 6, for which sum he gave the plaintiffs a decree together with prospective interest from the date of the decree, and the appeal is brought for the difference between the amount claimed and that decree.

After a careful perusal of all the record, and giving full weight to all that the appellants have urged for setting aside the decision, I am of opinion that there is nothing that would warrant my altering it

in any way. The appellants' claim has had full and patient investigation, and as their vakeel stated on the 7th January 1847, that no further investigation was requisite, the whole claim not having been proved, the appeal is groundless.

Under these circumstances there is no occasion to summon the respondents, as provided for in Clause 3, Section 15, Regulation V. 1831. It is, therefore, ordered, that the appeal is dismissed, the decree of the principal sudder ameen is confirmed, intimation of which is to be given him as directed in the Regulation just quoted.

THE 29TH APRIL 1850.

Case No. 81 of 1847.

Regular Appeal from a decision passed by Baboo Ramlochan Ghose Rai Buhadoor, Principal Sudder Ameen of Zillah Nuddea, on the 20th April 1847.

Puddum Lochun Mullick, for self and as guardian of Birjosoondur Mullick, minor son of Tarasoondur Goopta, (Defendant,) Appellant,

versus

Neelmadub Mullick and Munmohunee Goopta, (Plaintiffs,) Respondents.

THIS suit was brought by the plaintiffs to recover a sum of money, to which they were entitled under a will, and which was claimable from the defendants, who were in possession of the ancestral property, and thereby answerable for the money. This not being disputed, there is no occasion to enter into the details of the case.

The defence set up by the defendant, Puddum Lochun Mullick, is, that, with the exception of rupees 47, 14 annas, 10 gundas, the plaintiffs have received all they were entitled to, for which they have given their receipts.

The plaintiffs, in their rejoinder, repudiated having received any thing beyond what they have given credit for in their plaint, and deny the receipts alluded to by the defendants.

The principal sudder ameen, under the provisions of Section 10, Regulation XXVI. 1814, called on both parties to furnish proofs of their allegations. The plaintiffs did so, but the defendants did not, and on the forty-third day after the proofs were called for, the suit was decided in the plaintiffs' favor.

The first reason given by the appellant for being dissatisfied with the decision is that "it was passed on the forty-third day after the parties were called on for their proofs, which was a great hardship, as

he was about to file his proofs when the case was decided." The rest of the petition of appeal is a repetition of the answer to the original plaint, and complaining of his proofs not having been taken, and of the decree having been passed on insufficient grounds.

I am of opinion that the appellant had sufficient time allowed him to file his proofs, and that the decree, which is grounded on the appellant's own admissions as well as the proofs given in by the plaintiffs, is perfectly just, as is also the allowance of interest which the appellant objects to.

As I do not find any reason for altering the decree appealed from, under the provisions of Clause 3, Section 16, Regulation V. 1841, the appeal is dismissed without summoning the respondent, and the decree is confirmed, intimation of which is according to the enactment to be given to the principal sudder ameen.

THE 29TH APRIL 1850.

Case No. 83 of 1849.

Regular Appeal from a decision passed by Baboo Shamul Prun Moostofee, Moonsiff stationed at Handrah, on the 9th of August 1849.

Issur Chundur Biswas, (Plaintiff,) Appellant,

versus

Ramsoondur Sirdar, (Defendant,) Respondent.

THE plaintiff sued to recover a bond debt from the defendant, which debt the defendant repudiated, and declared that the plaintiff had brought this claim from enmity.

The plaintiff proved his claim by witnesses, and his account books (khata buhee) in a most satisfactory manner, and the defendant could not substantiate his plea at all. Strange to say the moonsiff has decided in favor of the defendant (respondent,) giving as one of his grounds that, as the plaintiff had prosecuted the defendant under Regulation VII. 1799, and also before the magistrate, it was highly improbable he would lend him money; but he does not appear to have considered, that the defendant's bond was written prior to the application to the collector or magistrate, so that the moonsiff's grounds for dismissing the claim are not good.

As I consider the plaintiff's claim clearly proved, it is ordered, that the appeal is decreed with full costs, and interest under Circular Orders of the 4th March 1836, and 12th of August 1842, and the moonsiff's decree is reversed.

THE 30TH APRIL 1850.

Case No. 47 of 1850.

Regular Appeal from a decision passed by Ramcomul Rai Chowdhree, Moonsiff at Mehurpore, on the 23rd of February 1850.

Casheenath Sircar, (Defendant,) Appellant,

versus

Ram Keshub Mujmoadar, (Plaintiff,) Respondent.

THIS suit was brought by the plaintiff for the recovery of a bond debt, which the plaintiff proved by his witnesses to the satisfaction of the moonsiff.

The defence set up by the defendant was, that the plaintiff had through enmity on account of his not letting the plaintiff have some land in puttunnee, that he has made up this bond, and that his claim is false.

The witnesses in support of the defence are not worthy of credit, because their evidence corresponds too much in minutiae; and in the next place their evidence is not supported by any documentary evidence.

I consider the moonsiff has given the case every attention, and the appellant has not shown any good or sufficient reason for altering the decree. Under these circumstances there is no occasion, under Clause 3, Section 16, Regulation V. 1831, to summon the respondent.

Ordered, that the appeal be dismissed, and the moonsiff's decree confirmed, notification of which is to be given to the moonsiff according to the above enactment.

THE 30TH APRIL 1850.

Case No. 66 of 1850.

Regular Appeal from a decision passed by Baboo Kassishur Mitter, Moonsiff stationed at Sooksagur, on the 8th of March 1850.

Teencowree Zungur, (Defendant,) Appellant,

versus

Degumber Pal Poddar, (Plaintiff,) Respondent.

THE plaintiff sued for 9 rupees principal, and 1 rupee 5 annas interest, for money borrowed without any acknowledgment or bond.

The defendant was not served with either notice or proclamation, on which grounds he appeals from the moonsiff's decision, which was passed *ex parte* under the provisions of Clause 3, Section 22, Regulation XXIII. 1814.

It appears on a reference to the record that the moonsiff admitted the evidence of two persons as witnesses to the execution of the proclamation, who were not neighbours of the defendant, as required by Clause 1, of the enactment just quoted. The receipt too was not

granted in the absence of the defendant by a mundul, putwarree, or any principal inhabitant, but purports to have been given by the village chowkeydar ; and it does not appear from the evidence of the two witnesses whose evidence has been recorded, and who were residents of other villages, and according to their statements were passing by when their names were written on the chowkeydar's receipt as witnesses, that diligent search was made for the defendant, merely that he was not present.

I do not consider that there is any proof of the notice having been duly served upon the defendant, or that he was aware that any suit was pending in the moonsiff's court, and that there was not in consequence sufficient grounds for trying the case *ex parte*.

It is therefore ordered, that the suit be remanded to the place it had formerly on the Sooksagur moonsiff's file, and that he proceed to try it *de novo*, taking the defendant's answer, and allowing him to cross-question the witnesses.

ZILLAH PATNA.

PRESENT: R. J. LOUGHNAN, ESQ., JUDGE.

THE 6TH APRIL 1850.

No. 206.

Appeal from a decision passed on the 9th August 1849, by the Moonsiff of the Eastern Division, Skeikh Ullee Uzeem.

Modun Sing and others, (Defendants,) Appellants,

versus

Deonarain Sing, (Plaintiff,) Respondent.

THE plaintiff claimed rupees 102-3, the value of the proprietor's share of crops of the Fuslee year 1255, and of produce of fruit trees of the years 1254 and 1255 F., of 10 beegahs 9 cottahs of land in Lukha chuck, part of a lot named "Uz Ruqba Muhseto," purchased by him as the property of Mohomed Ismael and Mahomed Ibrahim, at a collector's sale held for realization of an arrear of revenue; and the ground of the action is that the defendants wrongfully collected and appropriated the said crops and fruits.

Jhundoo Sing defendant admitted cultivating 5 beegahs of the land, calling it Lukha Chuck Puchceskooroa, but under defendants Sheodyal Chuttoordharee, proprietors by sale purchase, and Modun Sing and Bagha Koonjura farmers. Karoo Sing, defendant, denies all responsibility. The other defendants asserted their rights to the lands on account of which the crops are claimed, either as proprietors or farmers.

Both parties made application to the moonsiff for the reference of the case to the arbitration of three persons, viz., Motee Lall, Ghoolab Sing, and Meer Boonyad Alli, named in their written petitions, binding themselves to abide by their decision. A decision was passed signed by all the arbitrators and dated 25th July, but not put into court till the 6th August, in the terms of which a decree was passed, adjudging the amount sued for, with costs to the plaintiff.

The appellants' grounds for appealing against the decision of the arbitrators and the decree are, first, that the arbitrators did wrong in permitting Jankee Ram, the brother of Motee Lall, one of the members, to act as agent to the plaintiff; secondly, that the arbitrators, in refusing their request to visit the lands and satisfy themselves as to the possession of the parties by enquiry on the spot, showed their partiality to, or collusion with the plaintiff; thirdly, as also in not making enquiry on the spot into the amount of the produce; fourthly, in not taking into consideration a proceeding of the magistrate, who

visited the lands after the possession of plaintiff had been declared by the sessions court under the provisions of Act IV. 1840; fifthly, that Boonyad Alli was actually at Barr from the 24th to the 31st July when the appellants were in attendance upon him; he could not therefore have been with the other arbitrators at Patna on the day the decision was dated 25th July; and they could not account for his signature being affixed to it, and, besides his absence from Patna on that day, they could prove that he had never seen any of the papers of the case.

In this case it was incumbent on the appellants to prove gross partiality. If all that the appellants state were true such partiality would not be inferrible from it. If the arbitrators were guided more by the sessions proceeding directing the plaintiff to be maintained in possession on these lands, than by the magistrate's proceeding in which on the ground among others that the sessions order had not been duly made known to the defendants, and that plaintiff had got possession on the lands without the issue of a purwana after the receipt of the sessions order, they were acquitted of contravening the order, it is difficult to see proof of partiality in that. Even if it were proved that Boonyad Alli was at Barr between dates mentioned in the appeal, that could not prove that he had not concurred in the decision, and had not signed it in token of his concurrence; and as to appellant's assertion that he never saw any of the papers of the case, it is contradicted by the appearance of Boonyad Alli's signature upon the orders of the arbitrators of the 24th June and 1st July, which clearly show that he sat and issued orders in concert with them in the case. The appellants were not in attendance on the arbitrators while they were enquiring into the case. Their absence appears, from the representations of their mooktyar Roopee Sing made to the arbitrators, to have been wilful, consequent on the refusal of the arbitrators, for reasons stated in their proceedings, to proceed to the lands in dispute and make local enquiry. They were of opinion, on the evidence afforded by the sessions proceeding already mentioned, that the defendants, who purchased the rights of Bheemson and Teekaram in Moghul chuck, being unable to find the lands, by changing Moghul chuck into Lukha chuck in the title deed obtained by them from the adawlut, endeavoured to get and retain possession of plaintiff's lands in the said Lukha chuck. From a perusal of the decision of the arbitrators and the papers of the case, I do not think that justice required that they should make the local enquiry on which the appellants insisted, or consequently that their refusal of it was an act of partiality to the plaintiff.

Thinking the grounds stated in the appeal totally insufficient to warrant interference with the award, I dismiss this appeal, and confirm the decision of the lower court, without summoning the respondent.

THE 13TH APRIL 1850.

No. 9.

Appeal from a decision passed by Mr. E. DaCosta, Principal Sudder Ameen, on the 31st December 1849.

Luchmun Sing and Rughoo Sing, (Defendants,) Appellants,
versus

Pursundun Panday, (Plaintiff,) Respondent.

SUIT for Company's rupees 784-3, on a bond for the principal sum of 600 rupees. The plaintiff stated that the defendants, owing him on account of the bond 744 rupees and on account of a recent loan (dust gurdan) 100 rupcees, making in all 844 rupees, made application to the collector by petition of the 8th February for the payment to plaintiff of a deposit in the treasury, being surplus proceeds of a land revenue sale of defendants' estate amounting to rupees 842; but before plaintiff could draw the money, they (defendants) caused it to be attached through their creditors who had instituted suits in the civil courts: that, however, on the representation of the collectorate authorities of the previous transfer to plaintiff, this attachment was withdrawn: finally, the collector, being of opinion that Section 20, Act I. 1845 forbade him to pay away the money to any party but the defendants; the proprietors, without a precept from the civil court, directed them, by an order of the 9th September, to give receipts and draw the money: that defendants, taking advantage of this order, attempted, by presenting a petition at variance with their petition of the 8th February, to defraud him and appropriate the amount to their own use. He therefore was compelled to bring this action and to attach the deposit through the court; and he intended to sue separately for the 100 rupees' loan, that being a transaction separate from that of the bond.

In reply, the defendants, admitting the debt of 744 rupees under the bond to be due, state that, with a view to obtain the speedy payment of the deposit from the collector's treasury, and at the same time the settlement of this debt, they did make application to the collector for the payment of the whole amount of the deposit, stating themselves in the petition to be debtors to plaintiff for a loan of 100 rupees, which, however, is only nominal, besides the amount of the bond and its interest; that the temporary attachment of the deposit by the civil court, and the order of the collector refusing payment to any other party but themselves, which order, they contended, was not warranted by the section of the Act in question arose from no fault whatever of theirs, and that, so far from giving any petition to the collector at variance with that in which they assigned over the deposit to plaintiff, they had done nothing to prevent payment to plaintiff; on the contrary, in their receipt, which they presented under constraint,

conformably to the order of the collector, as the only means of getting the money from the treasury, they inserted a clause to the effect that the money belonged to plaintiff, and they were drawing it in order to pay to him, being constrained to do so by the collector's order. Moreover, that plaintiff had not stipulated for the payment of interest, for the period during which the money might remain in the collector's treasury after defendants had made it over to them—no such condition being found in defendants' application or that of plaintiff, which was conformable in its tenor to it; that as defendants made over this deposit, and still are ready to transfer to plaintiff the amount stated in the petition to the collector to be due under the bond, viz.; rupees 744, he cannot be considered entitled to any interest, and in fact to have any ground of action to entitle him to costs of this suit, which, to satisfy an old grudge, he had instituted merely with a view of harassing and vexing the defendants, and subjecting them to loss by the payment of interest and law expenses. In this answer, and also in a separate petition, defendant moved the court to send for rupees 744, by their transfer of which on the 8th February they had satisfied the debt on the bond, and to pay it over to plaintiff, deciding the cause out of its turn with a view to save the interest of the money, which otherwise would lie idle in the collector's treasury.

In his judgment the principal sudder ameen, who took no notice, further than passing the usual order for bringing forward the papers of defendants' application for an immediate hearing of the cause, states the only question for consideration to be whether the defendants are liable to the payment of the interest, which they object to pay, and on the grounds that the collector was precluded from paying the deposit to defendants' order by Section 20, Act I. 1845, and therefore the principal sudder ameen could "see no reason why the plaintiff should be deprived from receiving interest up to the date of payment according to the terms specified in the bond?" He decreed the claim, with costs, and interest to the date of payment of the whole.

It is evident from the above, as the appellants contend, that the questions for decision were not correctly laid down, and the principal sudder ameen, not having fully comprehended them, has made an incomplete investigation and decision.

The points for adjudication were these—

First. Did the plaintiff engage to receive the amount which was due on the bond on the 8th February, from the deposit without further interest whenever the money might be disbursed from deposit, as complete satisfaction of the debt on the bond or not?

Secondly. Was the defendant's act in proceeding to draw the money according to the collector's order fraudulent in intent, or otherwise?

Thirdly. Was the plaintiff absolved by that act of defendants from the obligation of fulfilling the agreement he entered into by the petitions of February the 8th or not?

Fourthly. Or did the plaintiff, by preventing the disbursement of the money and causing it to be still kept under attachment, put it out of the defendants' power to pay the sum of 744 rupees, which they avowed themselves in their answer, filed within a week of the institution of the suit, still ready to cause to be paid to them?

Whether the collector was or was not justified in refusing payment to plaintiff under Section 20, Act I. 1845, is a question which I doubt the competency of the principal sudder ameen to decide, as he has done in this case, without hearing the collector, and he, not being a party, could not be heard. Besides, the plaintiff has not grounded his action upon the decision of this question. He sues upon the bond, because the defendants violated their engagement to pay him from the amount of the deposit.

The decision of the points in debate rests, I think, in some measure, on the mode in which plaintiff's suit, which it appears is now pending in the moonsiff's court, for the loan of 100 rupees, mentioned in the petitions of 8th February, may be disposed of. The claims are so connected indeed, that I am of opinion the two suits ought to have been considered and decided in the same court at the same time.

Under all these circumstances, I decree the appeal, and, reversing the principal sudder ameen's decision, remand the suit to be again tried and decided with advertence to the foregoing remarks, and, should the suit of the respondent for the loan of 100 rupees, against appellants, be still undecided in the moonsiff's court, simultaneously with that suit, in order to which the requisite orders will be issued from this court to that of the moonsiff forthwith.

Considering the view which the principal sudder ameen took of this case, *i. e.*, thinking as he did that there might be grounds for the action although no fraudulent intent, or no intention to violate their own agreement, were proved against the defendants, it was, I am of opinion, incumbent on him to pass a definite order on the application of defendants for an immediate hearing; and even if he thought there was no sufficient reason for granting it, at least to have given the defendants an opportunity of at once paying over so much of the deposit as they stated themselves anxious to cause payment of to plaintiff, by sending for the money from the collector's treasury and permitting defendants to transfer it to plaintiff. By not doing so, he has passed a decree anomalous, in so far as it awards interest as a penalty for withholding that which the defendants are disabled by the act of the court from paying. As this sum is perfectly undisputed, and its payment and receipt by the litigants cannot embarrass the decision of the points really at issue in any way, I see no objection to this course being now pursued.

The value of the stamps in the appeal will be refunded to the appellants.

THE 17TH APRIL 1850.

No. 18.

*Appeal from a decision of Mr. E. DaCosta, Principal Sudder Ameen,
passed 24th February 1849.*

Syud Kulb Alli, (Plaintiff,) Appellant,

versus

Jan Alli and others, (Defendants,) Respondents.

SUIT for vakeel's fees, laid at Company's rupees 501-3-6.

The plaintiff was the vakeel of Muhumdee Begum, one of the defendants in this suit, in a pauper suit instituted by Jan Alli and the other defendants, and the costs of Muhumdee Begum were decreed payable by them. Among the costs were the vakeel's fees amounting to rupees 320. It is to be gathered from this appeal that appellant first sought to recover his fees from Jan Alli and the other plaintiffs by the summary process of the execution of the decree against them, actually attached their property with that view, and that notwithstanding this those parties paid over to Muhumdee Begum, the opposite party defendants in the cause, the amount of the fee, by getting her to set it off against a claim of the plaintiffs against Khaja Hadaet Alli Khan, under the same decree in which these costs had been awarded. Muhumdee Begum, it appears from the decision in the present cause, disputed the fact of the fee being due, saying that appellant, being her relative, agreed to plead her cause gratis. Moreover, from the summary application being refused and appellant referred to a regular suit, it is to be inferred that Muhumdee Begum and appellant had agreed among themselves according to the option given in Section 2, Clause 5, Regulation XII. 1833, as to the terms on which appellant was to plead; and, therefore, a dispute having arisen, the agreement could not be enforced on a miscellaneous application, under the provisions of the next or 6th Clause of the same Section. Appellant pleads that as the fee was not deposited because the suit was instituted *in formâ pauperis* according to the provisions of Act IX. 1839, and as, he contends, the fee was decreed to him, the vakeel, neither Muhumdee Begum had any right to receive, nor the plaintiffs any authority to pay it to her. The questions for decision in the case were these: were Jan Alli and the other defendants authorised to pay to Muhumdee Begum or not? Had they any option? Appellant's plea that the decree was in his favor is futile. If it were so, it could be enforced by him against the plaintiff; secondly, had the plaintiffs taken on themselves to judge what fee the vakeel was entitled to, and, deciding that the vakeel was entitled to the whole sum inserted in the decree as his fee, had paid him that

amount, and it had been afterwards decided in a regular suit that the vakeel was not entitled to so much, they would have been liable to pay the excess over again. Had they withheld payment from both parties, they might have subjected themselves to the payment of interest, for the sum was chargeable with interest to the day of payment. I am therefore on all accounts clearly of opinion that the respondents had no option but to pay the money on demand to Muhumdee Begum, to whom payment had been decreed, and consequently were rightly exempted from liability to pay either the amount sued for or costs of suit, by the decision of the principal sudder ameen. I therefore dismiss this appeal, and, without requiring respondents to reply, confirm the decision which awards payment of the fee, with costs of suit, (with exception of those incurred by the other defendants, which are made payable by appellant,) against Muhumdee Begum alone.

THE 17TH APRIL 1850.

No. 19.

Appeal from a decision passed by Mr. E. DaCosta, Principal Sudder Ameen, on the 15th March 1849.

Bhunjun Thakoor and others, (Defendants,) Appellants,

versus

Government, (Plaintiff,) Respondent.

SUIT to set aside as illegal and collusive a deed of sale as far as regards a 4 anna share of talooka Bhutsara, on the ground that such share had been previously pledged as security for payment of a loan made by Government: laid at rupees 4,401-12.

The defendants, who held the deed of sale, pleaded, among other things, in their answer, as now in appeal, that the share in question of the whole talooka had not been pledged, but only of one mouzah; and yet without calling on the plaintiff for proof as to the extent of the property pledged, or apparently noticing the plea of defendants, the principal sudder ameen passed a decree for the claim, with costs. The enquiry is evidently incomplete and the decision faulty. I therefore decree the appeal, and, reversing the decision, remand the suit for re-trial and enquiry into the point omitted. The value of the stamps of this appeal will be refunded to the appellant.

THE 17TH APRIL 1850.

No. 18.

Appeal from a decision passed by Rae Shunker Lall, Principal Sudder Ameen, passed on the 4th April 1849.

Ujnaso and others, (Plaintiffs,) Appellants,

✻ *versus*

Syud Rahut Hossein and others, (Defendants,) Respondents.

SUIT for possession on certain property, on the ground of a deed of conditional sale said to have become absolute. The defendants having denied execution of the deed, and also the due serving of notice accompanied by copy of the application for its issue under the provisions of Regulation XVII. 1806, the case was nonsuited for want of proof of such serving of notice. The notice to Bhoolun, one of the alleged sellers, who is described therein as resident of Mukoondpore, but at present residing at Tilhara, was hung up, as appears by the return, at the house of Kurm Alli, said to be brother to Bhoolun's husband, in the last named place; and the reason the principal sudder ameen thinks the serving insufficient is that the goryt who certified to the peada having hung up the notice, also certified that Bhoolun was not residing there at the time. Secondly, the principal sudder ameen, not finding any mention of the copy of the purchaser's application having been conveyed to the seller or of its having accompanied the notice in the return of the nazir of zillah Behar, who served or hung up the notice, although it was mentioned in the proceeding of the principal sudder ameen from whose court the notice issued and in the return of his nazir, considered the proof of its having been furnished along with the notice deficient.

The appellant urges that the notice in this suit addressed to Bhoolun, though hung up at her residence in Tilhara, having reached her, as appears by her having defended the suit, is a proof that she was residing there when the notice under Regulation XVII. was hung up at the residence of her husband's brother two years before. Secondly, that the principal sudder ameen accorded too much weight to the certificate of the goryt, and not enough to the proceeding under Regulation XVII. of the principal sudder ameen and the return of his nazir. What appellant states is clearly insufficient to prove the residence of Bhoolun at Tilhara at the time in question, and the essential document in regard to the notice on Rahut Hossein is evidently the return of the nazir of Behar, not either that of the principal sudder ameen's nazir, or the proceeding.

I therefore dismiss the appeal, and confirm the decision, without calling on the respondents.

THE 19TH APRIL 1850.

No. 26.

Appeal from a decision passed by Mr. E. DaCosta, Principal Sudder Ameen on the 19th April 1849.

Omadhur Bhut, (Defendant,) Appellant,

versus

Uhmudoollah, (Plaintiff,) Respondent.

SUIT, instituted by the purchaser of landed property sold in execution of a decree, and the sale of which was summarily cancelled, to recover from the decreeholder interest on the purchase money: laid at rupees 417-3-5.

The principal sudder ameen, in the decision, writes: "the question therefore to be decided is, whether the suit is cognizable, and, if so, is the plaintiff entitled to interest?" and having considered this question, or these two questions, he decrees without noticing that there was a third question raised by the defendant, who pleaded, denying the cogency of plaintiff's reasons, that he could not be held liable to the payment of interest even if plaintiff's right to receive it were established.

The appellant repeats this plea; and the enquiry being evidently incomplete, and the decision consequently vitiated, I decree the appeal, and reversing the decision remand the suit for re-trial with advertence to what is said above. The value of the stamps will be returned to the appellant.

THE 19TH APRIL 1850.

No. 27.

Appeal from a decision passed by Mr. E. DaCosta, Principal Sudder Ameen, on the 17th April 1849.

Hoolas Muhto, (Defendant,) Appellant,

versus

Jugunnath Singh and others, (Plaintiffs,) Respondents.

SUIT for arrears of rent, laid at rupees 147-8, of which the sum of rupees 3-12 has been decreed, with proportionate costs.

The defendant denied the right and possession of the plaintiffs on the property the rent of which they claimed, pleaded payment to Musst. Luroonn, whom they alleged to be in possession, and argued that this suit ought to be decided simultaneously with that instituted by Luroonn against the plaintiffs in this case to establish her right.

The principal sudder ameen having adjudged the defendant to pay the rent already paid by them to Luroonn, on the ground they ought to have paid to the plaintiffs; whose possession and consequently right

to receive it was established by the proceedings held in the sessions court, in appeal from an order of the magistrate passed according to Act IV. 1840, he appeals on the ground that this suit ought not to have been decided while that instituted by Luroonn continued undecided. This plea is contrary to the provisions of the above Act, according to which the party whom the magistrate finds to be in possession is to be maintained in possession till ejected by due course of law. Possession cannot be real without the exercise of the rights appertaining to the party in possession, and without their enforcement by the courts when they are withheld.

I therefore dismiss this appeal, and confirm the decision, without calling on the respondent to plead.

THE 19TH APRIL 1850.

No. 34.

Appeal from a decision passed by Mr. E. DaCosta, Principal Sudder Ameen, on the 17th April 1849.

Jugunnath Singh and others, Plaintiffs, (Appellants,)

versus

Pemraj and others, Defendants, (Respondents.)

SUIT for balance of rent, laid at rupees 147-8.

The defendants according to the decision denied their cultivation in the property purchased by the plaintiffs, in consequence of which denial the principal sudder ameen deputed an ameen to make local inquiry into the fact of their cultivation. The ameen submitted a report, stating that a number of witnesses stated that the defendant did not cultivate lands forming part of plaintiffs' purchase, but that he did cultivate other lands; and the principal sudder ameen, on the ground of this report discredited the depositions taken in the kutcherry of the collector while the suit, afterwards transferred to the civil court, was pending in the kutcherry of the collector, of the witnesses who affirmed the cultivation by defendants of 34 beegahs in the possession of plaintiffs, and dismissed the suit, awarding payment of costs to defendant.

Plaintiffs appeal on the ground that the ameen's report is collusive, and, even if not so, does not afford grounds for discrediting their witnesses and considering their case to have failed.

The insufficiency of which a report is, I think, evident, for it does not state that the land which the witnesses represented defendants to cultivate is that which plaintiffs pointed out as that of which they claimed the rent, neither does it appear that the witnesses or the plaintiffs were called on to point out the lands designated by them in their respective statements. Until that is done it is clear that nothing definite can be ascertained; for the fact that defendants cultivate another party's land may be true, and yet they may also cultivate lands

possessed by the plaintiffs, and it is not clear what reason the witnesses have for thinking, or what means they have of knowing, that he does not. The local enquiry being incomplete, the decision appears to have been passed on inadequate grounds, and must be reversed, and the suit must be remanded for re-trial, after, should a local enquiry be deemed requisite, a more complete investigation. The ameen when deputed should be instructed to call on the plaintiffs to point out the lands of which they claim the rents, and then, in the event of the defendants denying that they cultivated them, to endeavour to ascertain from the inhabitants of the vicinity (to whom they must be shown by the ameen) who cultivated them, and to measure their extent; or should the defendants allege that they form part of a distinct estate from that of which plaintiffs assert themselves to be the purchasers, to report specially for further orders. Appeal decreed. Suit remanded accordingly. Value of stamps to be refunded to appellants. The ameen omitted to cause the depositions of the witnesses to be signed by the parties or their respective agents: he should be called to account for the omission.

THE 24TH APRIL 1850.

No. 31.

Appeal from a decision passed on the 18th April 1849, by Mr. E. DaCosta, Principal Sudder Ameen.

Gopal Lall and Gopeenath, (Defendants,) Appellants,

versus

Moost. Muhboobun, (Plaintiff,) Respondent.

THIS suit was instituted by respondent to obtain payment from appellants and the other defendants in the cause, of the balance of an instalment bond executed by them for themselves and as their guardians for the appellants; two instalments having been already awarded by the sudder ameen by a decree dated 15th February 1847. The principal sudder ameen, deeming this decree conclusive as proof of the execution of the instalment bond, and considering that, as it remained in full force, he had no alternative but to decree payment of the remaining instalments, decided accordingly.

The appellants, as in their answer, contend that the suit was collusive between the plaintiff and their former guardian, Mukoond Kishour, that the other guardian, appellants' mother, never had occasion to, nor did she borrow the money, and even if their guardians had done so, pledging or risking the safety of their property, they had no authority to do so, and appellants could not be held liable; further, that though Mukoond Kishour had admitted the execution of the kistbundee, and caused a decree to pass in the sudder ameen's court, they being minors at the time their rights could not be affected, according to Construction No. 744, either by that answer

of Mukoond Kishour or by the decree. Now it appears to me that the merits of a decree passed against minors represented by their guardians may be called in question, though it may have become final, for special reasons. An instance in point is seen in the suit of Gunga Pershad and Govind Pershad (respondents, in the Sudder Dewanny Adawlut,) instituted in Mr. DaCosta's court to obtain exemption from liability in regard to a bond and decree passed on it against them. This suit, being decreed by the principal sudder ameen, was appealed to the Sudder Dewanny Adawlut by Hurchurn Sookul, and decided in that Court on the 19th June 1848.

I consider that the pleas of the appellants ought to have been enquired into, and therefore the investigation is incomplete. I therefore decree the appeal, and, annulling the decision, remand the suit for re-trial with advertence to the above remarks. The value of the stamps will be refunded.

THE 30TH APRIL 1850.

No. 212.

Appeal from a decision passed by Mouleevee Sujjad Alli Khan, Moonsiff of the Western Division, on the 30th July 1849.

Tirpoora Mohun Mittr, (Plaintiff,) Appellant,

versus

Doma Rae and others, (Defendants,) Respondents.

CLAIM to balance of rent of land due on account of 1254 F., laid at rupees 100-6-4.

The defendants denied cultivating any lands belonging to the estate of the plaintiff or in his possession, pleading that the lands in their occupancy, the rent of which plaintiff claims on the ground that they are situated in Nizampore Duleep mokurruree, a dakhilee of his mouzah Mujholee, belong to the dakhilee mouzah Nizampore settled with Rampore Soomer, the estate of Rummun Sing and others, objectors, who are in possession receiving the rents. These parties having made a petition to the moonsiff, alleging their right to and possession upon the lands in question, he dismissed the suit, on the grounds that the right to the lands was disputed and could not be established in this case, and that for plaintiff to institute a suit for rents, without having his right to the lands first established, was contrary to established practice.

The appellant pleads that he has proved the lands to be included in his estate, and could have proved his receipt of rents and consequent possession and right to collect them, by the copy of a decision, dismissing the summary suit instituted by the defendants to obtain redress against his distraint of their effects, which decision defendants having appealed by suit in the moonsiff's court, was nonsuited on the day on which this suit was decided, but appellant's vakeel in the lower court neglected to file it.

Leave having been given to appellant, after the respondents had been cited, to file this document, he did so. It appears from it, and from the proceeding held under Act IV. 1840, by the law officer, as assistant magistrate, on 13th March 1848, that when appellant distrained respondent's khurreef crops for the recovery of rents of the Fuslee year 1255, they instituted a suit against the distrainer in the collectorate, and also lodged a complaint at the thanna stating that they were farmers of Nizampore belonging to the estate of the objectors, and, having reaped their crops, were apprehensive of an attempt of the appellant to carry them off violently. This complaint led to an investigation as to which of the parties was in possession, but the law officer failed in his attempt to clear up this point. The respondents having been cited have put in no reply to the appeal. Although, therefore, there is nothing on the part of the plaintiff to show that the decision of the assistant collector has become final, by the lapse of the period of a year, within which an appeal against it is admissible by the Regulations, yet as the respondents have not denied its finality, and the witnesses adduced by the plaintiff have spoken to the collection by him of a portion of the rents of 1254 F., from the respondents, I consider the proof of plaintiff's title to collect the rent founded on possession to be sufficiently made out, and, reversing the moonsiff's decision, decree the amount principal and interest claimed, viz., rupees 100-6-4, with further interest on the principal pending trial, amounting to rupees 25-2, total rupees 125-8-4, with costs of suit in both courts, and interest on the whole sum thus decreed up to the day of payment, payable from respondents to appellant. The objectors will bear their own expenses.

ZILLAH RAJSHAHYE.

PRESENT: G. C. CHEAP, ESQ., JUDGE.

THE 5TH APRIL 1850.

No. 37 of 1849.

Appeal from the decision of Moonshee Ahmud Ullee, Moonsiff of Dhoobul-hutte, dated the 21st of March 1849.

Kasheenath Napit and Lochun Napit, (Defendants,) Appellants,

versus

Habceer Shah, (Plaintiff,) Respondent.

THIS was a suit to recover rupees 171-13, due with interest on a *kistbundee*, or instalment bond, dated the 11th Jyte 1241 B. S., and the moonsiff gave the plaintiff (respondent) a decree.

Against this decision the appellants appeal, pleading that the moonsiff first called upon the plaintiff to attend and identify them, but, without his attending, gave him a decree, and Kashee Naie was on the date of bond at Moorshedabad.

As the suit was instituted on the 11th September 1848, or 28th *Bhadur* 1255 B. S., more than 14 years after the date of the *kistbundee*, and there was no proof on the record to show how the original debt was incurred, and why there was such delay in suing, the appeal was admitted on the 5th February last, and respondent, through his *vakeel*, directed to show cause. In the answer filed (by a *vakeel*) it is merely stated that the suit was brought within 12 years, as the last payment, *under the kistbundee*, was payable in Poos 1250 B. S., and that the moonsiff dispensed with the personal attendance of his client, after he had been summoned, as it was quite clear the parties had dealings, and that the *kistbundee* was given in settlement of an account. Adverting to the decision of the Sudder Court in the case of Anthony DeSilva *versus* George Lewis and others, (page 324, Sudder Dewanny Adawlut's decisions for 1849,) I think in the absence of proof or accounts to show when and what sum was originally advanced, the moonsiff's decision must be reversed, and the claim dismissed. I therefore decree the appeal, dismiss the plaint, and make all costs chargeable to the respondent.

THE 5TH APRIL 1850.

No. 45 of 1849.

Appeal from the decision of Hurmohun Newgee, Moonsiff of Bogra, dated the 20th of March 1849.

Puchaie Pykur, (Plaintiff,) Appellant,

versus

Anundee Paramanick, (Defendant,) Respondent.

THE appellant sued to recover rupees 137-5-10, being principal and interest, alleged to be due under a bond for 130 rupees, dated the 23rd Poos 1254 B. S., and the moonsiff dismissed the claim, as it was proved the respondent had borrowed in the month of Assar of the same year, of another person by name Enamdee, 25 rupees, and had signed the bond himself, while the evidence to this case only proved that the bond had been signed for the respondent or defendant, and he (the moonsiff) did not see why he should not have signed the bond for the larger amount. The appeal was admitted on the 8th of February last, and the aforementioned Enamdee was summoned, but is *non inventus*. After reading his evidence taken before the moonsiff, and also that of the witnesses to the execution of the second bond (or one in this case,) I see no reason to doubt the transaction, or that the money was lent by the appellant, and a bond given to him by the respondent. His signing the bond, or not, was not a thing the appellant could rule or direct, and as Assar (when the money was lent to Enamdee) came before Poos, how could the appellant know he had, in his own name, given another person a bond, and signed it himself? Being satisfied with the evidence adduced by the appellant, I decree the appeal and claim, with interest, and make all costs, in both courts, chargeable to the respondent.

THE 5TH APRIL 1850.

No. 50 of 1849.

Appeal from the decision of Moulvee Nusserooddeen Hyder, Moonsiff of Kheytooparra, dated the 28th of March 1849.

Kishenkaunt Dutt, (Plaintiff,) Appellant,

*versus*Omakaunt Surma Roy and Parbuttee Churn Surma Roy,
(Defendants,) Respondents.

THE appellant sued to recover rupees 18, annas 12, being principal and interest, alleged to be due under a bond for 15 rupees, dated the 11th Aughun 1253 B. S., given by the respondents; and the moonsiff dismissed the suit, as the plaintiff, though directed to summon the writer of the names of the two attesting witnesses, (and who was also a witness to the execution of the bond,) refused to do

so, and though allowed would not take time to do it. The case, it is true, was an *ex parte* one; but the moonsiff, as judge presiding over the court of first instance, if not satisfied with the evidence of the witnesses, *who could not read or write*, was fully competent to demand the production of the witness who could, and the appellant has only himself to blame for not complying with the very reasonable order passed. The appeal is, therefore, dismissed, and the moonsiff's decision affirmed, without a notice calling on the respondents to appear.

THE 6TH APRIL 1850.

No. 118 of 1849.

Appeal from the decision of Hurmohun Newgee, Moonsiff of Bogra, dated the 23rd of July 1849.

Radhanauth Newgee, (Plaintiff,) Appellant,

versus

Syudancee Mohbilnessa Choudhrain, Syud Noor Ullee Choudree, and Khoodeea Nussou, (Defendants,) Respondents.

CLAIM, for rupees 139-4-3, being damages on account of paddy (or rice in the husk) made away with by the defendants from a *gollah*, where, it is alleged, it was put by the appellant, or plaintiff. The moonsiff dismissed the suit, holding the case not proved. Against this decision the appellant appeals, insisting that he put the paddy in the *gollah* belonging to Noor Ully Choudree, and that it had been purchased by him with advances made. I have read all the evidence taken before the moonsiff, and cannot find that the appellant had the permission of the zemindar to put paddy in his *gollah*. He was a discharged *naib*, discharged apparently because he could not make up his accounts; and that he had any *lien* in the paddy that was in the zemindar's *gollah*, or Noor Ullee's, I do not hold established. Therefore, concurring with the moonsiff, I dismiss the appeal; but, as the respondents have appeared by vakeel without any notice being served upon them, they must pay their own costs.

THE 6TH APRIL 1850.

No. 135 of 1849.

Appeal from the decision of Moonshee Ahmud Ullee, Moonsiff of Dhoobulhuttee, dated the 14th of August 1849.

Shibchunder Bagchee, for himself and for guardian of Ishurchunder Bagchee, a minor, (Plaintiff,) Appellant,

versus

Rajoo Kubraj, (Defendant,) Respondent.

CLAIM, for 25 rupees, damages on account of paddy and straw forcibly cut and carried away by the respondent or defendant. The

moonsiff dismissed the claim, as there was no proof of forcible cutting and carrying away; on the contrary, the defendant had been put in possession of the land by *ryots* who hold *pottahs* for it, and had then cultivated it, and reaped the crop. Against this decision the appellant appeals and insists the land was his own *khamar*, and had been cultivated by him. If so, and he was ejected by the respondent, he ought to have sued for possession and mesne profits, not for damages. The moonsiff's decision is, therefore, affirmed, and appeal dismissed, without calling on the defendant to appear.

THE 6TH APRIL 1850.

No. 147 of 1849.

Appeal from the decision of Mr. A. DeLemos, Moonsiff of Shahzadpore, dated the 22nd of August 1849.

Sookoor Mahomed Khuleffa, (Defendant,) Appellant,

versus

Oojul Munnee Bewah, mother of Hurreenath and Kishenchunder Paul, minors, (Plaintiff,) Respondent.

THE respondent sued to recover rupees 14-4, being principal and interest, alleged to be due by the defendant under a bond, dated 7th Sawun 1252, given by him to her husband, deceased; and the moonsiff decreed the claim.

The appellant, in his answer, pleaded an *alibi*, and this is his plea in appeal. Four witnesses deposed to accompanying him to Rampore Bauleah in *Jyte*, and returning with him in *Assin*. All these men, however, were residents of Shahzadpore, and related to the appellant; and as the latter, in his grounds of appeal, states he gave in a list of eighteen witnesses, the case will be sent back to the moonsiff to examine any four that reside in Bauleah, through the sudder moonsiff; and as it is not clear that the appellant was confronted with the plaintiff's witnesses, the moonsiff (if this was not done) will summon them again, and examine them to his identity. The value of the stamp, on which the petition of appeal is written, to be returned to the appellant, and the usual order as regards costs.

THE 8TH APRIL 1850.

No. 169 of 1849.

Appeal from the decision of Moonshee Ahmud Ullee, Moonsiff of Dhoo-buttee, dated the 30th October 1849.

Jattrā Haree, Luba Haree, and Dooga Haree, (Defendants,) Appellants,

versus

Shibnath Dutt, (Plaintiff,) Respondent.

THE respondent sued to recover 61 rupees, 8 annas, being the balance, with interest, due on a bond for 50 rupees, dated the 5th Poos 1253 B. S., given him by the defendants jointly; and the moonsiff decreed the claim.

Appellants, in their answer, besides denying the debt, pleaded that the respondent had not in his plaint stated his proper place of residence; but no evidence in support of this plea was adduced. The same plea is pleaded in appeal, with others, of a great deal of irrelevant matter, and as I see no reason for disturbing the moonsiff's decree, the same is affirmed, and appeal dismissed.

THE 9TH APRIL 1850.

No. 135 of 1848:

Appeal from the decision of Hurmohun Newgee, Moonsiff of Bhowanny-gunge, dated the 18th of November 1848.

A, Kishen Kant Shah, and B, Ramkoomar Shah, (Defendants,) Appellants,

versus

Dyamyē Dossea, (Plaintiff,) Respondent.

THE respondent instituted this suit to recover rupees 150, on account of dower due for her niece's marriage with B, and the moonsiff gave her a decree for 100 rupees, B, as stated, being the bridegroom, and A, the girl's maternal uncle. These parties now appeal, pleading, *inter alia*, discrepancy in the evidence relating to the amount of dower that had been fixed when she was betrothed to another person; and that respondent was not entitled to sue, or demand dower, as she was only the widow of the girl's paternal uncle, therefore only her aunt-in-law. On the 5th of February last another suit (No. 134) between the same parties, relating to pecuniary damages claimed by the respondent, on account of an alleged assault at the marriage of Birmomye, was decided, and the parties in this were advised to settle their disputes among themselves, but this they have not done. The case, therefore, has been taken up, and as I see no reason for disturbing the moonsiff's decision, (himself a Hindoo, and fully competent to decide if the respondent had or had not a right to sue,) I affirm the same, and dismiss the appeal, with costs payable by the appellants.

THE 13TH APRIL 1850.

No. 72 of 1849.

Appeal from the decision of Moonshee Ahmud Ullee, Moonsiff of Dhoolhuttee, dated the 23rd of May 1849.

Ramdhun Paramanick, Ram Nath Paramanick, and Gour Mohun Kittuneah, (Defendants,) Appellants,

versus -

Baneekishen Paramanick, (Plaintiff,) Respondent.

THE respondent sued to recover rupees 127, 9 annas, and 6 pie, being the balance, with interest, alleged to be due on a bond, dated the 15th Bysack 1250 B. S., for rupees 105 given to him by the appellant; and the moonsiff gave the plaintiff a decree. Against this decision appellants appeal, deny having given any joint bond; that in Phalagoon 1249 B. S., they went on a pilgrimage to Gyah, and did not return till Jyte 1250 B. S., and that the suit, *ab initio*, was a false one, got up against them, because they (appellants,) as *ryots*, had protested and prevented the respondent getting a *dur-ijarah*, or under-farm, of their village; that the respondent had lodged several complaints in the foudjaree, which had been dismissed, and now resorted to the civil court to annoy those inimical to him. I find witnesses have been examined and spoken to the journey to Gyah; but the other pleas have not been enquired into, and there is no cause assigned for the great delay in suing. I therefore think the case must be remanded for further investigation, and sent to the moonsiff of Bograh, who will, if necessary, send for any foudjarree proceedings, and summon the person who held the *ijarah* of the village called Seetulee, where appellants reside, and ascertain from him if the respondent, or plaintiff, ever offered to take a *dur-ijarah* of it, and, if he did make the offer, why it was rejected. The value of the stamp on which the petition of appeal is written will be returned to the appellants, and the usual order as regards costs recorded.

THE 13TH APRIL 1850.

No. 82 of 1849.

Appeal from the decision of Moonshee Ahmud Ullee, Moonsiff of Dhoolhuttee, dated the 1st of June 1849.

Goburdhun Byragee, Habil Mundul, and Mooktaram Sirdar,
(Defendants,) Appellants,

versus

Banee Kishen Paramanick, (Plaintiff,) Respondent.

THE respondent instituted this suit to recover rupees 63, 8 annas, 5 pie, being the balance, with interest, alleged to be due on a bond,

dated 12th Kartick 1254 B. S., for rupees 59 given to him by the appellants, and obtained a decree from the moonsiff. Against this decision the appellants appeal, and in their grounds of appeal nearly the same pleas are assigned as by the appellants in case No. 72, decided this day, to the suit being, *ab initio*, a false one. The respondent or plaintiff is the same as in the other case, and again allusion is made to his not obtaining a *dur-ijarah* he sought. This case is, therefore, sent back for further investigation to the moonsiff of Bograh, and the same order passed as in case No. 72.

THE 15TH APRIL 1850.

No. 65 of 1849.

Appeal from the decision of Moonshee Ahmud Ullée, Moonsiff of Dhoolbuttee, dated the 21st of May 1849.

Khowaj Mundul, (Defendant,) Appellant,

versus

Haroo Mirdha, (Plaintiff,) Respondent.

THE respondent sued to recover rupees 298, 13 annas, 10 pie, being principal and interest due on a bond, dated 11th Sawun 1250 B. S., for 200 rupees, alleged to have been given to him by the appellant, and the moonsiff decreed the claim, with interest. Against this decision the appellant appeals, pleading, as in his answer to the original plaint, that he was a *mahajun*, and lent money, *ergo*, what occasion could he have to borrow of another? This plea the moonsiff rejected, as he (appellant) could produce no account books, only some old bonds. After reading the evidence to the execution of the bond, I see no reason for disturbing the moonsiff's decision. It is, therefore, affirmed, and the appeal dismissed; and as the respondent has appeared by vakeel without a notice being served upon him, he must pay his own costs.

THE 15TH APRIL 1850.

No. 99 of 1849.

Appeal from the decision of Moonshee Ahmud Ullée, Moonsiff of Dhoolbuttee, dated the 25th of June 1849.

Beparoo Mundul and Kokae Mundul, (Plaintiffs,) Appellants,

versus

Patna Bewah, mother of Googra Nusssoo, a minor, (Defendant,) Respondent.

THE appellant sued to recover 32 rupees, alleged to be due on a *kistbundee*, or instalment bond dated the 27th Chyete 1244 B. S., given by Jye Nusssoo. The bond was for 24 rupees, and 11 rupees the plaintiffs admitted had been paid. The interest on the balance was more

than the principal, *ergo* the double was claimed; and again, interest on the 11 rupees paid, made up the 32 rupees. The moonsiff dismissed the suit, as the defendant's witnesses proved her husband had died in 1242 B. S., how then could he give a bond in Chyte 1244 B. S.? And Googra, her son, was not a minor. Appellant still insists the debt was due, and adds, if Googra was not a minor, he was ready to make him a defendant. It is now too late to do this. I find no endorsement on the bond of the 11 rupees paid, and how the interest on that payment is calculated, there is nothing to show, nor has any reason been assigned for not inserting the payment on the bond? Under all the circumstances, I think the whole a suspicious transaction, and, therefore, affirm the moonsiff's decree, and dismiss the appeal, without calling upon the respondent to appear.

THE 15TH APRIL 1850.

No. 130 of 1849.

Appeal from the decision of Moulvée Nusserooddeen Hydur, Moonsiff of Kheytooparra, dated the 31st of July 1849.

Bhugheerut Muzoomadar, (Defendant,) Appellant,

versus

Ramsoondree Dibe, widow of Rughoonath Tullapattur, deceased, and mother and guardian of Sreenath Tullapattur, a minor, (Plaintiff,) Respondent, Birjo Soondree and Pearee Soondree, (formerly defendants in the moonsiff's court,) Petitioners.

THE respondent sued to set aside a summary award of the deputy collector of Pubna, adjudging as due, for arrears of rent, rupees 34, 12 annas, 2 pie, against her minor son, and also the sale of his deceased father's *jote*, to realize the above amount, and which *jote* was purchased by the present appellant for the sum of 80 rupees.

The moonsiff reversed both, on the following grounds:

First. That it was shown from the *surberakar's* papers that the *jumma* of the *jote* was 20 rupees, 1 anna, 10 gundahs, and from the *dakhillas*, ~~rent~~ paid for 1253 B. S., amounted to 21 rupees, 6 annas, 6 pie. Thus, there being no arrear, no suit for arrears could lie.

Second. The suit by Birjo Soondree and Pearee Soondree was instituted against Rughoonath Tullapattur and Sreenath Tullapattur, as the party *seised*, or in possession of the *jote*. Now the former was dead when the suit was instituted, and the latter a minor, and therefore could not be sued. The fact of his minority the moonsiff from personal observation speaks of, and adds that the suit ought to have been against the widow (the respondent,) as guardian of the minor, as she, and not the minor, was in possession. On these grounds he reversed the award of the deputy collector, and also

reversed the sale to the appellant, directing him to relinquish his possession, and adjudging *mesne* profits, from the date of sale to the date of possession being given up.

The *zemindars* have given in a long petition, and refer to the attachment of their estates on account of an affray in which a darogah was killed by the rioters; but this cannot affect either the summary suit or regular one before the moonsiff. The summary suit was instituted on the 14th June 1847, an *ex parte* decree passed by the deputy collector on the 28th August of the same year, and the *jote* sold by the assistant collector in March 1848, while the affray did not take place till the month of July following.

On the grounds of the party sued being a minor, and *not in possession*, I consider the whole of the proceedings held by the revenue authorities invalid, and that they must be reversed. It is quite evident the *zemindars*, or petitioners, *must* have known of Rughoonath's demise, and they *ought* to have known that his widow *alone*, as guardian of his minor son, could be sued for the arrear, whether summarily or in a regular suit it mattered not. I think in a sale of this kind some provision should have been made for the return of the purchase money to the purchaser of the *jote*. The vakeel states that the surplus is in deposit; and as the moonsiff holds him liable (and quite properly) for *mesne* profits, I do not think the omission to notice the refund of consequence, as the appellant *may* have more to pay than to receive. The Sudder Dewanny Adawlut's Circular Order, No. 15, of the 10th August 1838, was cancelled by their order (and that of the Government,) on the 16th April 1840, and therefore it is *presumable* the court, reversing a sale for arrears of revenue, can direct the refund of the purchase money to the purchaser. In this case no objection has been made to the moonsiff's order, *in hoc re*, by the appellant; and holding with him that both the summary award and sale were invalid, I affirm his decree, and dismiss the appeal, without calling upon the respondent to appear.

THE 17TH APRIL 1850.*

No. 146 of 1849.

Appeal from the decision of Hurmohun Newgee, Moonsiff of Bogra, dated the 23rd of August 1849.

Azeemoollah Sircar, (Plaintiff,) Appellant,

versus

Aboo Sircar, Abdoollah Nussou, and Surdoollah Nussou, (Defendants), Respondents.

THE appellant sues to recover rupees 13, 11 annas, and 11½ pie, being principal and interest, alleged to be due on a bond for 7 rupees, dated the 21st Phalgun 1247 B. S.; and the moonsiff dismissed the suit, not crediting the evidence adduced in support of the

bond, and suspecting it was a malicious suit, as defendants had complained against the plaintiff in the foudaree. I concur with the moonsiff, and therefore affirm his decision, and dismiss the appeal.

THE 17TH APRIL 1850.

No. 150 of 1849.

Appeal from the decision of Moonshee Ahmud Ullee, Moonsiff of Dhoobulhuttee, dated the 18th of August 1849.

Bydenath Joge, Madhub Joge, Ramkoomar Paramanick, and
Haradhun Sirdar, (Defendants,) Appellants,

versus

Dyaram Sirdar, (Plaintiff,) Respondent.

THIS case was before appealed, and, for the reasons stated in the proceeding of this court of the 10th July last, was sent back for further investigation, (*vide* Zillah Decisions for Rajshahye for 1849, page 72). The moonsiff having now decreed the claim, the defendants appeal. But after reading the evidence of the two witnesses, since taken, I see no reason for doubting that the money (100 rupees) was lent to the appellants, and that they executed the bond. I therefore affirm the moonsiff's decision, and dismiss the appeal, without calling upon the respondent to appear.

ZILLAH RUNGPORE.

PRESENT: T. WYATT, Esq., JUDGE.

THE 23RD APRIL 1850.

No. 3 of 1848.

*Appeal from the decision of the Principal Sudder Ameen of Rungpore,
dated 26th February 1848.*

Mussamut Omashuree Dibeā, wife of Kalee Chunder Chowdhry,
deceased, Zemindar of Pergunnah Udasee, held in joint tenancy,
(Plaintiff,) Appellant,

versus

Meer Fuzul Emam, Mussamut Ramessuree Dossea, and Odasuree
Dossea, wives of Nundoolal, (Defendants,) Respondents.

THIS suit was instituted in order to set aside as invalid a deed of sale, dated 4th Poos 1241 B. S., which the mother of the plaintiff's husband, Kalee Chunder, as the guardian of her son during his minority, had executed in respect to the opunchokee of kismut Bullubbisshoo, in pergunnah Udasee, with a view to liquidate an arrear of rent of pergunnah Udasee, of which her son was a joint proprietor, advertised for sale on the 4th Poos 1241, in favor of Nundoolal Doss, the purchaser, whose two wives, after his death, were defendants, viz., Mussamut Ramessuree and Odasuree Dossca, and who sold the property to the other defendant Fuzul Emam. The act of the mother was impugned, on the ground that she had no legal right to sell any landed property belonging to her son, who was, moreover, a minor at the time of sale.

The principal sudder ameen dismissed the plaint, finding that the cause for the sale was founded in truth, and for the benefit of Kalee Chunder Chowdhry, that the deed of sale was proved, and that Kalee Chunder had obtained his majority when the sale took place, into whose hands, conjointly with those of another person, the subscribing witnesses to the deed depose the purchase money was paid. Concurring with the principal sudder ameen, I dismiss the appeal, with costs, and affirm the decision of the lower court.

THE 25TH APRIL 1850.

No. 10 of 1848.

Appeal from the decision of the Principal Sudder Ameen, dated 15th May 1848.

Mussamut Purnomoi Dossea, wife of Sheebpershad Dhur, deceased,
(Plaintiff,) Appellant,

versus

Rammohun Doss and Brijomohun Doss, (Defendants,) Respondents.

THIS was an action for the recovery of a debt amounting, with interest, to Company's rupees 2,986-12-10, founded on a kistbundee, dated the 19th Pooos 1236 B. S., for the payment at the end of 1239 of Sicca rupees 1,600, of which Sicca rupees 399-14 were endorsed as having been paid.

The principal sudder ameen dismissed the plaint, on the ground of the plaintiff having afforded no evidence in proof of the payment in part stated to have been made, whence, more than 12 years having elapsed from 1240 B. S. to the date of the institution of the suit, the 7th Assin 1254 B. S., the action was barred by Section 14, Regulation III. 1793. I therefore reject the appeal, and affirm the decision of the lower court.

ZILLAH SARUN.

PRESENT: H. V. HATHORN, Esq., JUDGE.

THE 19TH APRIL 1850.

Nos. 27 and 28 of 1849.

A Regular Appeal from a decision passed by Syed Mahomed Wajid, late Moonsiff of Chumparun, dated 27th January 1849.

Modeeram, (Plaintiff,) Appellant,

versus

Sheodeal and Gopal, (Defendants,) Respondents.

CLAIM, for possession of a wall, north side of plaintiff's house, in Betteahgunge, pergunnah Mujhawa, value Company's rupees 30.

This suit was originally instituted in 1847, but struck off the file for default: it was subsequently re-instituted on the 15th April 1848.

Plaintiff and defendants are tenants of houses adjoining each other in Betteahgunge; the disputed wall (running east and west between the two premises) supports at present defendants' chopper. Plaintiff is building a brick house, and has finished the walls (as he states) to the south, east, and west, and lays claim to the cutcha wall to the north, which he is desirous of throwing down, and rebuilding with bricks, and taking possession thereof as his own property.

Defendants say that the wall claimed is a part of their premises, and supports the roof of their house, and that plaintiff has no right to possession. In a dispute before the deputy magistrate of Chumparun, dated 2nd January 1847, a summary order was given after local inspection, maintaining defendants in possession. This suit is brought to establish plaintiff's *right* to the disputed wall, and to cancel the deputy magistrate's proceedings.

The moonsiff called for a report in this case from the maharajah of Betteah, the landed proprietor, who observed that the disputants were mere tenants at will, and had no proprietary right in the gunge, and that plaintiff should not, in his opinion, interfere with defendants' wall and chopper. Both parties have cited numerous witnesses in support of their respective claims, and plaintiff has produced the bill of sale of the premises which he occupies.

The decision of the moonsiff awards the wall to *both* parties, directing that each party shall pay their own costs: against which both parties, in dissatisfaction, appeal.

JUDGMENT.

The evidence of the parties in this case is directly opposed to each other. I observe, however, in the plaintiff's bill of sale, dated 11th February 1846, that the premises purchased by him are clearly stated to be surrounded by *grass* walls, (char-dewar-kali-ast.) He can therefore have no right or title to defendants' *mud* wall on the north side. Moreover, defendants are in possession, and have had a chopper, or thatch, upon the disputed wall for some years past: this is corroborated by testimony, and also by the rajah's report.

The deputy magistrate also, on local enquiry, found defendants in actual possession. Plaintiff has failed to establish any *right* to the disputed wall, and, in building the remaining wall of his house to the north side, must not interfere with defendants' wall or chopper.

The moonsiff's decision, assigning the use of the wall to *both* parties, would naturally lead to interminable disputes; nor is it clear how he proposes that one wall should support two choppers, without the one interfering with the other.

ORDERED,

That the plaintiff's appeal be dismissed, and defendants' separate appeal, No. 28, be decreed, and the claim of plaintiff be dismissed, with full costs in both courts, and the decision of the moonsiff of Chumparun be annulled.

THE 23RD APRIL 1850.

No. 24 of 1847.

A Regular Appeal from a decision passed by Moulree Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 17th May 1847.

Junwur Das and Shicoburt Das, (Plaintiffs,) Appellants,

versus

Narain Dut and Bunwari Lal, (Defendants,) Respondents.

CLAIM, for annulment of a deed of sale, dated 31st August 1844, executed by Narain Dut in favor of Bunwari Lal, transferring the rights of a lease on advance, dated 14th June 1843, (2nd Assar 1248 Fussily,) amounting to Company's rupees 1,200, (obtained from Ramrooch Pandey,) *vide* case No. 23, preceding.

This suit was instituted on the 27th December 1845, before the principal sudder ameen, setting forth that the defendant, Narain Dut, (who was also a banker,) was heavily indebted to plaintiffs, and had become a bankrupt, and with a view of secreting his property, or disposing of illegally, had been induced by Bunwari Lal to sell to him this lease on advance, thereby defrauding the plaintiffs, his creditors. Plaintiffs state that, hearing of this and other transfers, they instituted a suit in court on the 3rd September 1844, against Narain Dut, for the sum of a draft amounting to Company's rupees

1,545, and petitioned for the issue of an "attachment," prohibiting the alienation of this 4 annas share in the village Potea, and other property, declaring the transfer to be fictitious, as it occurred within a month of becoming a bankrupt, and was contrary to the provisions of Regulation II. 1806.

The banker, Bunwari Lal, maintained that no attachment had taken place under Regulation II. 1806, *prior* to the sale, which was, therefore, legal, and could not be revoked, and that there was no law, as alleged by plaintiff, prohibiting the registration of several deeds, bearing several dates, or the same date.

The principal sudder ameen has dismissed this suit, with costs on the pleas urged by the defendant Bunwari Lal. Narain Dut did not defend the suit.

JUDGMENT.

Plaintiffs do not state the precise date or exact period when Narain Dut became a bankrupt. Conveyances made by bankrupts, with a view of defrauding their creditors, are doubtless illegal, and when detected might upon an action for that purpose be set aside, as void; but the fraud must, in all cases, be *proved* either expressly, or by consequence of certain acts done; it cannot be *presumed*, or *implied*.

This action is brought by a creditor ostensibly to cancel a sale, alleged to have been fraudulently made by a bankrupt; but the fraud is not proved, nor is the date of bankruptcy given. It is, however, clearly admitted by plaintiffs that the alienation, by sale, took place *before* any application on the part of the creditor was made for attachment. Under these circumstances the alienation is not barred by law.

ORDERED,

That this appeal be dismissed, with costs, and the decision of the lower court be affirmed.

ZILLAH SYLHET.

PRESENT: H. STAINFORTH, ESQ., JUDGE.

THE 3RD APRIL 1850.

No. 154 of 1849.

Appeal from the decision of Baboo Sharodapershad Ghose, Moonsiff of Ajmereegunge, dated 30th April 1849.

Rajkishwur Das, Appellant,

versus

Sheikh Meher Oollah, Respondent.

RESPONDENT sued to recover 29 rupees, the value of property plundered, and 50 rupees (with interest) extorted from him by appellant, &c., for which offences appellant was punished by the magistrate, whose order was upheld in appeal.

Appellant stated, in answer, that there is old enmity between him on the one hand, and respondent and his brother, Husrutoollah, on the other; that Husrutoollah instituted two complaints against him before the magistrate, who dismissed them both; that he (appellant) is servant of the zemindar of talookas Nos. 1 and 4, whose land respondent and his brother want to get possession of, and are opposed by appellant, that he (appellant) took out execution of a decree against respondent and others; that respondent plundered his kutcherry on the 9th Kartick 1252, *i. e.* on the date on which respondent declares himself to have been plundered; and that respondent's complaint was preferred to the magistrate on the said grounds of enmity, and in order to weaken appellant's complaint of the plunder of his kutcherry, which did not receive a full investigation, he (appellant) being fined: and he added that, after institution of this suit, respondent had offered to file a razeenamah, provided appellant would not oppose his getting possession of the lands of the aforesaid talookas, and would reinit part of the said decree.

The moonsiff (Baboo Sharodapershad) set aside the results of the investigation of the ameen deputed by him, relying on the evidence of the witnesses and the opinions of the magistrate and sessions judge, and decreed the claim.

Appellant now urges that the suit is founded solely on enmity; that respondent's statement is not proved by the enquiry of the ameen; that respondent's three witnesses are inhabitants of different

mouzahs from that in which the plunder is said to have occurred; that the conviction in the criminal court is not conclusive proof that 50 rupees were extorted, and 29 rupees' worth of property plundered from respondent; that no inhabitant of Kummulpore, where the plunder is averred to have taken place, has been brought forward as a witness by respondent; and that the evidence of such residents in that place as were examined by the ameen do not prove the claim, &c.

JUDGMENT.

The question at issue is not whether respondent has been oppressed, but whether there is proof that he has been robbed of 29 rupees worth of property, and been compelled to pay 50 rupees in cash. After perusal of the evidence I am clearly of opinion that these asserted facts are not proved.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit dismissed, with costs.

THE 8TH APRIL 1850.

No. 1 of 1850.

*Appeal from the decision of Moonshee Nuzeerooddeen Muhomed,
Moonsiff of Parkool, dated 16th November.*

Sheikh Kuleem and others, Appellants,

versus

Kalee Churrun Das and others, Respondents.

RESPONDENTS sued for 130 rupees, the value of a crop of linseed destroyed by the cattle of appellants and others.

Sheikh Kulleem and others resisted the claim, denying the trespass, and declaring the extent of land, and the crop, and its price, exaggerated.

The moonsiff (Moonshee Nuzeerooddeen Mahomed) held the trespass established, and decreed the claim in part.

Appellants now urge that their defence is established, &c. &c.

JUDGMENT.

The persons against whom the moonsiff's decree has been passed have been made jointly and severally liable for the whole amount decreed; but to justify such an order there must be proof of conspiracy to destroy the crop, and, no such proof existing, I cannot hold each individual liable for the whole amount of injury. Neither can I award specific sums as damages, for the evidence does not show the number of cattle owned by each of the persons sued: indeed, that all these persons were owners of the cattle is not satisfactorily established. Under these circumstances,

IT IS ORDERED,

That the decree of the moonsiff be reversed, and the suit dismissed, with costs.

THE 8TH APRIL 1850.

No. 66 of 1850.

Appeal from the decision of Baboo Chunder Kishwur Rai, Moonsiff of Hingajeeah, dated 16th February 1850.

Shuroolah Hujam, Appellant,

versus

Jyegobind Deb, Respondent.

RESPONDENT sued for 32 rupees, the value of a buffalo shot by appellant, who admitted having killed the animal, and promised to pay for it.

Appellant resisted the claim, denying having shot the animal and having agreed to pay for it, and asserting that respondent, his zemindaree mohurrir, had required him and others to pay 5 rupees each to make up for the loss of his buffalo, which had died in the jungle, and received the amount of his demand from other persons: and he pleaded *alibi*, both on the day on which he is said to have shot the animal, and on that on which he is said to have promised to pay for it.

The moonsiff (Baboo Chunder Kishwur Rai) distrusted appellant's witnesses on account of discrepancies, and their asserted recollection of dates deemed by the moonsiff incredible, and, holding respondent's statement proved, he decreed accordingly.

Appellant now pleads that his *alibi* is established; that his remaining witnesses should have been examined; and that a local investigation should have been made, &c. &c.

JUDGMENT.

Appellant is sued, and five others also as colluding with him. In what consists their collusion appears neither from the plaint nor the evidence, and their being sued without any explanation of the asserted collusion raises suspicion that appellant's statement of their having paid 5 rupees each to make up for the loss of appellant's buffalo is true. No enmity on the part of appellant is asserted, and yet the buffalo is said by the witnesses to have been shot while in a hut of 120 of its fellows, when it could not have been mistaken for a wild animal. On the whole, then, this claim is suspicious, and requires thorough sifting by a local investigation.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for the investigation indicated above. The price of stamp on

the petition of appeal will be refunded, and the moonsiff will pass orders in regard to the remaining costs of appeal.

THE 8TH APRIL 1850.

No. 67 of 1850.

Appeal from the decision of Baboo Chunder Kishwur Rai, Moonsiff of Hingajeeah, dated 25th February 1850.

Gour Churrun Deb, Appellant,

versus

Shama Dasee and others, Respondents.

APPELLANT sued for the balance of interest due under a bond, some of the principal of which, with part of the interest which had become due, had been paid.

The moonsiff (Baboo Chunder Kishwur Rai) held the claim barred by the Circular Order of the Sudder Dewanny Adawlut, dated 11th January 1839.

JUDGMENT.

The suit is not barred by the Circular, which the moonsiff has quoted and misunderstood.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for decision on its merits. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

THE 9TH APRIL 1850.

No. 2 of 1850.

Appeal from the decision of Baboo Hergouree Bose, Moonsiff of Russool-gunge, dated 17th December 1849.

Neelchand Shah, Appellant,

versus

Doolub Ram Shah and Soobul Ram Shah, Respondents.

APPELLANT sued for 100 rupees, lent to respondents on the 19th Bhadoon 1254 B. S., noticing that his former suit on this account was thrown out by nonsuit, because the date of loan was erroneously stated to be the 30th of Assin, according to his jumma-khurch book.

Respondents filed an answer, denying the loan, and pleading that, had a loan been made on the 19th Bhadoon (3rd September), it would not have been entered in the account book as advanced on the 30th Assin (15th October); that Doolub Ram was absent from Chattuk, the asserted place of the loan, on the 19th of Bhadoon,

having started in company with appellant, in search of a bride for Doolub Ram, on the 18th idem, and ~~that~~ the parties were on bad terms.

The moonsiff (Baboo Hergouree Bose) distrusted the evidence of the three witnesses adduced by appellant, because they were appellant's servants, and their testimony was conflicting: and, noticing that, in the former suit, *both* respondents were averred to have taken the money, while in this Soobul Ram *alone* is said to have taken it, and holding the asserted *alibi* established, he dismissed the suit.

Appellant now urges that his claim is supported by the evidence of 27 witnesses; that his former plaint and the present agree *quoad* the manner in which the money was borrowed, &c. &c.

JUDGMENT.

The money appears to have been lent by appellant to respondents, two *humtaum* brothers, his relatives, on the 19th Bhadoon, and it is carried forward in the day-book till the 30th of Assin, when it was entered in appellant's khata-bhye. This mode of keeping accounts may be irregular, but I see nothing fraudulent in it: on the contrary, I am fully convinced by the evidence of the truth of the claim.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the claim decreed, with costs.

THE 9TH APRIL 1850.

No. 57 of 1850.

Appeal from the decision of Baboo Chunder Kishwur Rai, Moonsiff of Hingajeeah, dated 23rd January 1850.

Ramshunker Das, Appellant,

versus

Radhubram and others, Respondents.

RESPONDENTS sued for rupees 103, the value of property attached and sold under Regulation V. 1812, with an equal sum as penalty.

Appellant disavowed connection with the affair, and imputed enmity.

The moonsiff (Baboo Chunder Kishwur Rai) decreed against this appellant, because he was proved to have offered to pay 30 rupees in settlement of the claim.

Appellant urges that, from the answer of Kaleekapershad, one of the persons sued, it is clear that he himself realized the rent, and that appellant had nothing to do with it; that he is not named in

the summary suit under Regulation V. 1812; that other persons similarly circumstanced have been relieved from liability by the moonsiff; and that he never offered money in settlement, &c.

JUDGMENT.

It is clearly proved that appellant took part in causing the sale of respondents' property, and that he participated in the proceeds. Under these circumstances I see no grounds for interference with the moonsiff's decree in regard to this appellant.

IT IS THEREFORE ORDERED,

That this appeal be dismissed, with costs.

THE 9TH APRIL 1850.

No. 68 of 1850.

Appeal from the decision of Moulvee Waris Alee, Moonsiff of Nuhbeegunge, dated 23rd January 1850.

Rajkishun Das and Sheikh Ubbaye, Appellants;

versus

Sheikh Umjud Oollah, Respondent.

RESPONDENT sued for rupee 1, annas 8, lent, on the 27th Bhadoon 1255, to Kishun Ram, 8 annas for himself, and 1 rupee for Sheikh Ubbaye, who agreed to pay.

The moonsiff (Moulvee Waris Alee) decreed the claim on *ex parte* evidence adduced by respondent.

In appeal, it is urged that Rajkishun has been fraudulently sued, from motives of enmity, under the name of Kishun Ram, with omission to mention the present place of his residence, the kusbah of Sylhet, and with omission of the prescribed notices to both appellants.

JUDGMENT.

Rajkishun has attended in person, and admitted that he is called Kishun Ram: issue of the prescribed process is attested, as ordered by the law: and I see no ground for interference in this petty case.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 12TH APRIL 1850.

No. 197 of 1849.

Appeal from the decision of Baboo Sharodapershad Ghose, Moonsiff of Ajmereegunge, dated 13th November 1849.

Oodey Chand Shah and Mahomed Yakooob, Appellants,

versus

Rajchunder Surmah, Respondent.

RESPONDENT'S plaint sets forth one-third of talooka Surbanund, No. 4, was the property of Buddun Rai, the husband of Beeroza Debia, while two-thirds belonged to Kaleekapershad; that Beeroza Debia gave her share, *i. e.* 5 puns, 6 gundahs, 2 cowries, 2 krants to respondent; that Oochub Rai and others, decreeholders, attached the property given to respondent as belonging to Kaleekapershad, but that respondent obtained a decree for it; that the two-thirds, which were the property of Kaleekapershad were bought at auction, at a sale in execution of a decree, by Raikishun Surmah, who sold a 2 puns, 13 gundahs, 1 cowrie, 1 krant share to respondent, who thus became, through gift and sale, proprietor to the extent of 8 puns; that Oochub Rai attached the said 8 puns, as the property of Kaleekapershad, when respondent claimed it, and his claim was allowed by the sudder ameen to the extent covered by the gift, and disallowed in respect to the property purchased, which was resold and purchased by Mahomed Yakooob; and it is to set aside the sale in reversal of the decision of the sudder ameen, that the present suit is brought.

Oodey Chand Shah filed an answer, the gist of which is that Kaleekapershad is *de facto* the purchaser and owner of the property, in the name of respondent his nephew, as the witnesses to the kuballa had sworn.

Mahomed Yakooob also filed an answer of similar import.

Respondent filed a reply, urging that the witnesses to the kuballa had merely guessed the purchase to be *benamee*.

The moonsiff (Baboo Sharodapershad) distrusted the evidence adduced by appellants, held those brought forward by respondent to have proved the purchase *bonâ fide*, and decreed the claim.

Appellants now urge that the *benamee* purchase of Kaleekapershad in the name of respondent his nephew, is proved by the evidence of the subscribing witnesses to the kuballa, and other respectable persons, to whose testimony the moonsiff has preferred that of some low fellows under Kaleekapershad's influence: and they add that the moonsiff ordered a local investigation of the matter to be made, but that respondent, apprehensive of the circumstances of the case becoming more clear from such a proceeding, did not lodge money for an ameen, &c.

JUDGMENT.

It appears to me clearly proved by the evidence of witnesses, some of whom are witnesses named by respondent, and are subscribing witnesses to respondent's deed of purchase, that the land in suit was purchased by Kaleekapershad in the name of respondent, his nephew, in order to evade the claims of mahajuns. Under such circumstances,

IT IS ORDERED,

That the decree of the moonsiff be reversed, and the suit dismissed, with costs.

THE 12TH APRIL 1850.

No. 31 of 1850.

Appeal from the decision of Baboo Chunder Kishwur Rai, Moonsiff of Hingajeeah, dated 24th December 1849.

Mahomed Kamil and others, Appellants,

versus

Massamut Faraye Beebee and others, Respondents.

RESPONDENT sued for 35 rupees, the value (including penalty) of cattle attached and sold under Regulation V. 1812, under pretence of their being tenants of enam land, held under pottah No. 4 of the collector, notwithstanding that respondents occupy their own land alone.

Mahomed Kamil and Gungapershad answered, pleading that respondents and others cultivated 2 krants, 2 cowries, 1 pun of their land under a kubooleut, paid rent for 1253 and 1254, and withheld it for 1255, wherefore they realized it by attachment and sale; and that two of the respondents are minors.

Respondents, in their reply, averred the majority of the asserted minors.

The moonsiff (Baboo Chunder Kishwur,) having waited in vain for proof of the defence, from the 20th of July, and finding respondents' statement proved, decreed the claim against the persons sued as principals.

Appellants now urge that Mahomed Kamil was in attendance at the criminal court, and the other two persons were ill, and therefore could not defend the suit, the merits of which would have been disclosed by production of their pottah and the kubooleut executed by respondent, &c. &c.

JUDGMENT.

Three persons have appealed: one filed no answer, though he appointed vakeel before the moonsiff; and another appellant, who with the third person sued, filed an answer, say they were ill, while Mahomed Kamil pleads that he was in attendance in the criminal

court. But adverting to the length of time during which the moonsiff waited in vain for proof from appellants, and the consequently insufficient ground they give for not defending the suit, no interference appears to me necessary.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 12TH APRIL 1850.

No. 56 of 1850.

Appeal from the decision of Moonshee Mahomed Moazum, Moonsiff of Latoo, dated the 15th January 1850.

Joogulram Das, Appellant,

versus

Seeraye Pal and others, Respondents.

APPELLANT sued under a bond for rupees 18, borrowed on the 19th of Sawun 1248, when the respondents were arrested by Nundkishwur Dut, a decreeholder under Regulation VII. 1799.

Seeraye Pal, Rajaram Pal, and Moheshram Pal, pleaded, in answer, that they were confined for seven days by Nundkishwur, who compelled them to pay four rupees in cash and to execute the bond in suit in the name of appellant—circumstances which they laid before the deputy collector, who, holding their statement true, struck Nundkishwur's case off his file, and sent the peeadas to the magistrate's court, where they were punished, &c. &c.

Appellant replied, declaring himself to have advanced 18 rupees in cash, and that he had nothing to do with the case to which respondents have alluded, &c. &c.

The moonsiff (Moonshee Mahomed Moazum) distrusted the evidence of the two surviving witnesses to the bond, and dismissed the suit.

Appellant now urges that his claim is made out, and that respondents' statement was rejected by the deputy collector, &c.

JUDGMENT.

Execution of the bond is admitted, and two witnesses have sworn to its voluntary execution. There is no evidence showing compulsion, nor are there circumstances which, without such evidence, warrant dismissal of the claim. I am of opinion that the suit should be remanded, that respondents may have an opportunity of substantiating the allegations in their answer.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for the enquiry indicated above.

The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass orders in regard to the remaining costs of appeal.

THE 12TH APRIL 1850.

No. 71 of 1850.

Appeal from the decision of Moonshee Nuzeeroodeen Mahomed, Moonsiff of Parkool, dated 18th February 1850.

Mrs. Martin, Appellant,

versus

Gopal Kishun, Respondent.

RESPONDENT sued for principal and interest under a bond for rupees 150, stating that he first advanced 100 rupees and afterwards 50 rupees more on the date of the bond, the 24th Phalgun 1255.

Appellant denied execution of the bond, and pleaded that, when she went to Calcutta, in 1254 B. S., she left 705 rupees, 7 annas, besides bonds, &c., under charge of respondent, who remitted 100 rupees to her in Calcutta, and otherwise expended 221 rupees, in all 321 rupees, having in hand 384 rupees, 7 annas, which he promised to pay, but instead of doing so, has, in addition to the present suit, instituted another, No. 26, for 204 rupees, 6 annas, 6 pies; that it is not likely that respondent would have lent her more money while the other suit was undecided, or that she would have borrowed from one who owed her money, and executed a bond in his favor; that 50 rupees were paid to Nooroollah on her account; and that she executed no deed saving a receipt for 371 rupees, composed of the items above acknowledged; and that it was possible it had been fraudulently altered.

Respondent, in reply, stated that he was appellant's manager; that 204 rupees, 6 annas, 6 pies was due to him on account of expenses less by 107 rupees, 11 annas, 4 pies, due to appellant; that afterwards on a settlement of accounts 100 rupees were found, and acknowledged by appellant in a certificate written in English and dated 1st March 1849 (19th Phalgun,) to be due to him; that the additional 50 rupees were advanced in order to obtain the security shown in the bond, and the bond executed as above stated, and the other suit settled by razeenamah; and that he has had no receipt for 371 rupees from appellant.

The moonsiff (Moonshee Nuzeeroodeen Mahomed) observed that appellant had been required to furnish proof of her defence on the 25th of May, but had suffered eight months and a half to elapse without doing so, and holding the claim fully established by three subscribing witnesses to the bond, decreed accordingly.

Appellant now repeats her former pleas, and adds that respondent's witnesses are under his influence, and their evidence discre-

pant; that respondent, who was her husband's pupil, and can write her name, may have altered the receipt given by her; and that illness and poverty on her part, and neglect on the part of her vakeel, were the causes of proof of her defence not having been furnished.

JUDGMENT.

The claim is fully supported by evidence, and does not appear to me in any way fraudulent: on the other hand appellant, though she has had more than ample time, has failed to produce evidence in support of her defence. Holding then that the claim is proved:

IT IS ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed; respondent, who has attended without being summoned, paying his own costs in appeal.

THE 13TH APRIL 1840.

No. 69 of 1850.

Appeal from the decision of Baboo Sharodapershad, Moonsiff of Ajmereegunge, dated 19th February 1850.

Gourchand Das and Rajkishwur Das, Appellants,

versus

Brijkishwur Shah, Respondent.

RESPONDENT sued to recover 19 rupees, 8 annas, the price of two bullocks, attached and sold under Regulation V. 1812, under the false pretence of his being defaulting tenant in talooka No. 4, of Buniachoung.

Rajkishwur Das and Gourchand Das pleaded, in answer, that forty persons, cognizant of the facts of the case, have been sued and colluding with the principals sued; that the land is, as per boundaries quoted, in talooka No. 4, and was formerly in the tenancy of Ilukea Nakarchee and Sheikh Mega, who relinquished it in 1252; that respondent tenanted it in 1253, and, not paying the rent, his cattle were sold at the appraised value of 4 rupees 9 annas, of which only 3 rupees 7 annas was the sum given to defendants, and that the land is now in defendants' own cultivation.

Respondent, in his reply, asserted the above named tenants to have been *his*, and that the land is now in his own cultivation, &c.

The moonsiff (Baboo Sharodapershad) held the claim established against appellants, and decreed against them.

Appellants re-urge their old pleas, and endeavour to throw discredit on respondent's witnesses, and object to the proceedings of the ameen, according to whose enquiry the moonsiff has decreed, as partial, &c.

JUDGMENT.

Before the case was decided by the moonsiff, respondent filed a petition, praying that the persons sued as colluding might be released from liability, but, irrespectively of this, I should not have ordered a nonsuit, because the answer of appellants does not form a good defence. It is no where asserted by appellants that respondent, who is declared to be tenant only for the commencement of the year for which the rent was taken, ever agreed to pay the rent exacted, and, under such circumstances, when no rent was fixed, appellants had no right to attack him summarily under Regulation V. 1812, and sell off his cattle; and the value of the cattle, as stated in the plaint being proved, I see no cause for interference.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 20TH APRIL 1850.

No. 55 of 1850.

Appeal from the decision of Baboo Sharodapershad Ghose, Moonsiff of Ajmereegunge, dated

Siridhur Surmah, Appellant,

versus

Kashee Gope and others, Respondents.

APPELLANT sued for enforcement of his right to act as appointed priest in the house of Durpudee Dasee, and to recover 6 rupees, 15 annas, 2 pie, paid to Rammohun Surmah, for officiating as priest at the obsequies of the mother of Durpudee Dasee.

Rammohun Surmah pleaded, in answer, that he acted under permission of Ramchunder Bhutacharge, who ought to have been sued; and that he received 3 rupees 4 annas only for his work.

Kashee Gope filed an answer, denying the truth of appellants' statement, and supporting the defence of Rammohun. A reply was filed, in which it is asserted that Kashee Gope also appointed appellant his priest.

Ramchunder Bhutacharge filed a petition in support of Rammohun.

The moonsiff (Baboo Sharodapershad Ghose) dismissed the suit, principally because women are incompetent to appoint priests, and because Durpudee's father's priest was not necessarily her's, while her husband's was.

Appellant now urges that the moonsiff has misunderstood the claim to rest on inheritance; that it is established; and that a bewasta should have been taken.

JUDGMENT.

The issue in this case depends on whether appellant was appointed priest in the house of Durpudee Dasee and her husband; but neither the examination of the witnesses, nor the moonsiff's examination of their testimony has been directed to the elucidation of this question with relation to specific facts; and under these circumstances the suit must be remanded for further investigation.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for the purpose above indicated. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders regarding the remaining costs of appeal.

THE 20TH APRIL 1850.

No. 73 of 1850.

Appeal from the decision of Moonshee Mahomed Moazum, Moonsiff of Latoo, dated 14th March 1850.

Mahomed Uzeem, Appellant,

versus

Mahomed Tuckee, Respondent.

RESPONDENT sued for 60 rupees, damages in consequence of having been abused by appellant, whom he had caused to be arrested in execution of a decree.

Appellant denied the abuse, and asserted that respondent claimed damages to which his circumstances were disproportionate.

The moonsiff (Moonshee Mahomed Moazum) held the abuse proved, and decreed 20 rupees damages.

Appellant now urges that respondent's witnesses are under his influence, and live at a distance; that the nephew of the owner of the bazar, where the abuse is said to have been given, was present, and should have been examined, and that a local enquiry should have been instituted.

JUDGMENT.

The evidence to the abuse is wholly un rebutted. Appellant should have adduced the nephew of the owner of the bazar, if his testimony was necessary; and I see no necessity under the circumstances for a local enquiry, but hold the abuse proved and the damages proper.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 23RD APRIL 1850.

No. 76 of 1850.

Appeal from the decision of Moonshee Mahomed Moazum, Moonsiff of Latoo, dated 23rd March 1850.

Rajkishun Das, Appellant,

versus

Puttee Dasee and others, Respondents.

APPELLANT did not defend this suit under a bond before the moonsiff, says he had been in attendance before the boundary commissioners, and subsequently sent a vakalutnamah and the rough draft of an answer, which were not filed; but the proclamation for appellant's appearance was published on the 10th January, while the suit was not disposed of before the 23rd March, and the moonsiff has certified that the commissioners had passed his court long after the time of the proclamation and returned fifteen or twenty days before the date of his decree. Under these circumstances appellant's plea in appeal is evasive and inadmissible.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 27TH APRIL 1850.

No. 167 of 1849.

Appeal from the decision of Baboo Sharodapershad, Moonsiff of Ajmeree-gunge, dated 10th August 1849.

Mahomed Mahtah, Appellant,

versus

Sumbhoo Chunder Dutt, and others, Respondents.

RESPONDENTS sued, for the fourth time, to regain possession of some land, alleging dispossession on the 1st of Bysack 1235, (11th April 1828,) and obtained a decree from the moonsiff.

Appellant pleaded, as he still does, that the suit is barred by lapse of time: and, finding, with reference to the dates quoted in the margin, that the 3rd suit on the same cause of action was not within time, according to the Construction recently placed on the law of limitation, it is my duty to reject the claim as inadmissible

under the said law.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit dismissed, with costs.

THE 29TH APRIL 1850.

No. 194 of 1849.

Appeal from a decision of Baboo Hergourree Bose, Moonsiff of Russool-gunge, dated 9th November 1849.

Sheikh Zukee and others, Appellants,

versus

Jugurnath Surmah and others, Respondents.

THIS suit was remanded for further enquiry on the 24th February 1849. It is for 4 rupees, 4 annas, illegally extorted as rent, with twice the amount as penalty, and it has been dismissed by the moonsiff; but, on examination of the evidence, I do not find it proved that appellant either executed a kuboolent for the rent exacted or paid it in the previous year. Under these circumstances, appellants appear to me to have a right to a decree for 4 rupees 4 annas, with an equal sum as penalty, against Jugurnath Surmah, Sudanund Surmah, and Ramnath Surmah, participators in the illegal and forcible exaction.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the sum of rupees 8-8 be decreed against Jugurnath Surma, Suddanund Surmah, and Ramnath Surmah, with costs, and interest from the date of the moonsiff's decree.

THE 29TH APRIL 1850.

No. 62 of 1850.

Appeal from the decision of Baboo Sharodapershad, Moonsiff of Ajmereegunge, dated 31st January 1850.

Sheikh Machoo *alias* Mahomud Masoom, Appellant,

versus

Khyr Oollah, Respondent.

APPELLANT sued to recover some money, which he had paid in liquidation of the bond on which another suit, appealed under No. 61, was founded.

Appellant's claim has been dismissed by the moonsiff, as disposed of in that other suit; but I am clearly of opinion that appellant should have been nonsuited, the payment in liquidation being only subject to consideration as a plea in reduction of the amount of respondent's claim.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and appellant nonsuited, with costs.

ZILLAH TIRHOOT.

PRESENT: JOHN FRENCH, ESQ., ADDITIONAL JUDGE.

THE 8TH APRIL 1850.

No. 277.

Regular Appeal from a decision passed by Moulvee Munneerooddeen Hossein, Moonsiff of Mhowa, dated 27th March 1848.

Bunseraje Raee, (Defendant,) Appellant,

versus

Rasbeeharee Singh and Asman Singh, Purchasers, and Lalljee Singh, Lessee, (Plaintiffs,) Respondents.

THIS is to recover the sum Company's rupees 31-2-6, arrears of rent on cultivation of 5 beegahs 9 biswas, payable in cash, 5 beegahs in kind, saher on bamboos and fruit, situate in village Kala Behar, chuck Hafiz, chuckla Gorejole, purgunnah Beesarah, on account of 1254 Fuslee.

Plaint sets forth: that in the abovementioned village Rasbeeharee Singh is 6 annas, and Asman Singh is 4 annas proprietor; the 6 annas belonging to Neemchund, he leased to Lalljee. The defendant being a cultivator of the village, not paying his rent for 1254 Fuslee, they sue him agreeably to the putwarree's accounts.

The defendant, in his answer, alleged: that within the 16 annas of the abovementioned village, 11 annas 1 pie is the property of Shah Mobaruk Hossein and others, and 4 annas 3 pie only is the share of the plaintiffs; that a pottah, or lease, in the name of his father, Omra Raee, was granted by Meerchund Dulloo Singh, and Asman, under date 19th of Aughun 1227 Fuslee, for 5 beegahs 9 biswas on the annual rent of 21 rupees 8 annas, agreeably to which the rates of rent has been paid to the respective proprietors, their receipts are forthcoming. With respect to the cultivation in kind, the aumlah of the plaintiff estimated the rice at 2½ seers, and the share of the plaintiffs was made over to their aumlah; there are witnesses to prove the delivery. The bamboos are the growth on the pottah land for cash rent, and there are no mhowah trees in his possession.

Sheikh Mobaruk Hossein filed a third party petition, urging: the share of the plaintiffs in the village is 16 dams only, 12 annas is his own share, and the remainder appertains to Shah Waheeddeen. The plaintiffs have unjustly sued.

The moonsiff decreed for the plaintiffs, on the grounds: under the objections stated in the decision of case No. 388, it was proved the plaintiffs were in possession of the whole 16 annas of the village, and that the third party were not in possession. The evidence of witnesses has proved the arrears of rent are due from the defendant to the plaintiffs. The receipts filed by the defendants are all denied by the putwarree.

From this decision the defendant appealed, urging: this is a dispute for proprietary right, which was not necessary for the moonsiff to have investigated into. The putwarree is a servant of the plaintiffs; on his denial of the receipts the moonsiff should have compared the handwriting and signature with other documents to ascertain whether they corresponded with the receipts; four witnesses on his part were adduced, and of their evidence there is no notice taken in the decision.

COURT.

From the decision of the moonsiff it would seem another decision passed in case No. 388, was taken as precedent for the decision of this: that decision not being filed, it is not possible to ascertain that fact. The appeal plaint alleges four witnesses had been adduced on the part of the defendant, and their evidence taken. On perusal of the papers of the case, no evidence of witnesses on the part of the defendant appears to have been taken. A list of witnesses appears to have been filed and four witnesses adduced, and owing to the indisposition of two of them the witnesses were put in charge of the defendant. Why the evidence of the witnesses was not taken, nor reason assigned in the decision for the omission thereof, shows the investigation to be incomplete: therefore, ordered, the case to be returned for re-investigation on the points above indicated.

Amount of stamp of appeal plaint be returned to the appellant.

THE 15TH APRIL 1850.

No. 217.

*Regular Appeal from a decision passed by Kaze Mohommud Allum,
Moonsiff of Coelee, dated 15th February 1848.*

Baboo Lallee Singh, (Plaintiff,) Appellant,

versus

Baboo Shuree Kishen Singh, Vendor, Bhyjoo Panrai, Rambuksh Panrai, and Sheehoobuksh Panrai, Purchasers, (Defendants,) Respondents.

THE action is laid at Company's rupees 78-8, being three times the amount of the annual revenue of the property under dispute. The suit is instituted for the right of pre-emption to one anna within 4 annas of the whole 16 annas of village Hurlakee, purgunnah Bhola, and for the mutation of the plaintiff's name of the said one anna in the

records of the collectorate under both heads of milkyet and revenue property.

The plaint sets forth: the abovementioned village was acquired by Heemut Singh Deehoo, the ancestor of the plaintiff, and the vendor; according to their genealogical table, 8 annas, or half, devolves to the plaintiff and other sharers, 4 annas to the vendor, and the remaining 4 annas to Rajah Bheer Singh Deehoo, brother of the vendor, and held by all as joint property. The vendor, without giving intimation to the plaintiff, sold one anna portion of his 4 annas share to the defendants, Bhyjee Panrai, Rambuksh Panrai, and Sheehoobuksh Panrai, who are strangers, on the 15th of Kartick 1250 Fuslee; for the sum of rupees 754 under conditional bill of sale. After the expiration of the proclamation issued under Regulation XVII. 1806, and order of the court under date 31st of July 1847, to sue regularly for the foreclosure, he was informed on the 14th of Sawun 1254 Fuslee of the sale; immediately thereon he performed the tullub mousebut and-eshhad, and took the amount purchase, tendered it to the purchasers and vendor, and claimed the right of pre-emption from them; they declined the tender, &c. He therefore sues.

The purchasers, in their answer, allege: after completion of the matter under Regulation XVII. 1806, the bill of sale was relinquished, and the purchase money refunded, the vendor, in conjunction with Rajah Bheer Singh Deehoo, granted a receipt for the money, whereby they had no longer any connection with the matter. A detailed explanation of the matters is specified in answer of plaint of Ram Shoomrun Singh and others, who sued for the pre-emption of the same one anna portion under case No. 198, which will suffice for this case.

The vendor filed a similar answer to the above.

Ram Shoomrun Misser, and six others filed a third party petition, urging: that Bhyroo Lall Singh Deehoo, and six others, proprietors of the 8 annas portion of the village sold to them, 4 annas of that portion, for the sum of Company's rupees 7,995 on the 30th of Sawun 1253 Fuslee, of which they are in possession. On the 13th of Sawun 1254 Fuslee, they heard of the passing of the order under Regulation XVII. 1806, to sue for the foreclosure of this one anna portion in this case, and also of the sale of one anna portion by Rajah Bheer Singh Deehoo, whereon they instituted a suit claiming the right of pre-emption in both cases. After institution of these suits, the vendors and purchasers colluded together, stating the bills of sale had been returned, and receipts for the money refunded had been granted, which was a mere deceitful compact of the parties.

The moonsiff decreed $\frac{1}{2}$ an anna to the plaintiff of this suit and $\frac{1}{2}$ an anna to the plaintiffs in case No. 198, on the grounds that the plaintiffs of both cases had established their claim; that the plaintiff of this case to pay into court half the purchase money, that is, rupees 377, with interest, within one month, when he will be let in possession of the portion awarded.

From this decision the plaintiff appealed, urging: the plaintiffs in the other case are only recent purchasers in the village, whereas he is a relation of the vendors and hereditary sharer in the village, thereby has a claim of right to the entire quantity of pre-emption sued for, and the decree of the moonsiff, awarding half and half to the different plaintiffs, is not just.

COURT.

This suit is a claim of right of pre-emption to one anna portion within 4 annas share of the village. There being another distinct suit claiming the right of pre-emption to the said one anna portion, the moonsiff decreed half and half to the plaintiffs of each suit. The appeal from this decision urges, the plaintiffs' relationship to the vendor and descendant of the original proprietors of the village, his claim should be taken in preference to that of the plaintiffs of the other case, who are sharers by purchase, and that recently. From the papers of the case it appears the plaintiffs in the other case for some property, have been proprietors of 4 annas share in the village for more than a year, have thereby attained an equal right with the appellant, who has not shown his exact portion in the village to sue for pre-emption and to expect a decision in their favor. Hence there appearing no just cause to interfere with the decision of the moonsiff, it is hereby affirmed, and the appeal dismissed.

THE 16TH APRIL 1850.

No. 282.

*Regular Appeal from a decision passed by Kaze Mohummud Allum,
Moonsiff of Coelee, dated 15th March 1846.*

Bhuwanee Tuthooah, (Defendant,) Appellant,

versus

Poodo Dass, Goonanund Dass, and Basdeib Dass, (Plaintiffs,) Respondents.

THIS suit is to recover the sum of Company's rupees 26-13-6, being principal and interest of arrears of cash rent for 1247 F., on 12 beegahs 11 biswas of land, situate in village Baskee Beeharee, pergunnah Jureil.

The plaint sets forth that the plaintiffs' father took a lease of 8 annas share of the above mentioned village from Poosun Jha and others, for a period of ten years, from 1245 to 1254 Fuslee, at an annual rent of rupees 1,325; and the defendants being cultivators within the village, they in 1247 Fuslee cultivated 12 beegahs and 11 biswas at different rates, to the aggregate amount of 25 rupees 14 annas; not having paid their rent on the 8 annas leased, they therefore sue for the same.

The defendants, Bhuwanee Tuthooah and three others, in their answer, deny the *plaint in toto*, and allege, they did not effect any cultivation in the village in 1247 Fuslee. From 1250 Fuslee that Bhuwanee Tuthooah himself cultivated 15 biswas of land on kind rent, the other defendants have no concern therein.

The moonsiff decreed in favor of the plaintiffs, on the grounds: the evidence of the plaintiff's witnesses proved the cultivation to have been effected by Bhuwanee Tuthooah in 1247, that the other defendants reside with him as one family. The charge of 1 rupee, 13 annas, 2 gundas, marriage fees, being contrary to the regulations, is to be deducted from the amount suit, and the remaining decreed.

One of the defendants Bhuwanee Tuthooah appealed from the above decision, urging: the village is held as joint property by all the sharers, and he did not cultivate any land of the village; if he had, the other sharers would have had knowledge thereof, and his name would have been inserted in the village accounts, hence it was necessary to have called for the putwarree of the village and his accounts, to ascertain whether he had been a cultivator in the year 1247 Fuslee.

COURT.

The first point in all suits is to ascertain whether the plaintiff has a right to sue. In this case the plaintiffs are lessees of 8 annas share of the village, but have not filed the lease, nor has the moonsiff called for it, which should be done, in order to ascertain whether the lease be written on a proper stamp, and the authenticity to have been proved by evidence of witnesses; and it is evident if one portion of the proprietors have a claim to rent, which is held in joint tenancy by all, the others have equally a claim to rent from the cultivator, thereby it was necessary to have called for the putwarree of the village with the accounts thereof, to ascertain therefrom whether the appellant was or not a cultivator in the year 1247 Fuslee—hence the investigation of this case is incomplete. Therefore, ordered, the decision of the moonsiff be reversed, and the case returned for re-investigation on the points above indicated.

The amount of stamp of appeal plaint be returned to the appellant.

THE 18TH APRIL 1850.

No. 283.

*Regular Appeal from a decision passed by Kazee Mohummud Allum,
Moonsiff of Coelee, dated 15th March 1848.*

Soophul Raee, (Defendant,) Appellant,

versus

Poodo Dass, Gomanund Dass, and Basdeib Dass, (Plaintiffs,) Respondents.

THIS suit is for the recovery of Company's rupees 9-7-4, being principal and interest of arrears of rent on the cultivation of 9 beegahs and 9 reins of land, for the year 1254 Fuslee, situate in village Baskee Beeharee, pergunnah Jureil.

This plaint is similar to that of case No. 282 just decided. The defendant in this case acknowledges the cultivation of 4 beegals 14 biswas on cash rent, at the annual rent of rupees 9-7-3, which has been paid. Receipts to 3 rupees 4 annas have been obtained, but for the remainder no receipt was given. He will prove the payment by witnesses. For the 15 biswas of bhaolee cultivation he paid rupees 1-4-3, but no receipt has been given to him, and there is no rent due to the plaintiffs.

The moonsiff decreed for plaintiffs, on the grounds: from the report of the ameen, who had been deputed to the spot to ascertain what quantity of cultivation had been effected by the defendants, it appears the defendant had cultivated 8 biswas 14 dhoors more than that specified in the plaint, and from the evidence of witnesses the claim of the plaintiffs is proved. The defendant has not adduced witnesses to prove the payments of rent for which he obtained no receipt, and more credit has been given by the plaintiff than the amount of the defendant's filed receipts.

The defendant appealed from the decision, alleging: the ameen had colluded with the plaintiffs, who showed other persons' cultivation more than his; and the ameen would not listen to his objection against it. His witnesses were adduced, but the moonsiff would not take notice thereof.

COURT.

The plaintiffs in this case, as in case No. 282, sue as lessees, and have not filed their lease, nor did the moonsiff call for it; hence the investigation is incomplete: therefore this case is returned for re-investigation on the same points as indicated in case No. 282, in respect to the lease and the evidence.

The amount of stamps of appeal plaint to be returned to the appellant.

THE 17TH APRIL 1850.

No. 279.

Regular Appeal from a decision passed by Kazeer Mohummud Allum, Moonsiff of Coelee, dated 18th March 1848.

Imreet Loll Missr, (Defendant,) Appellant,

versus

Muhabur Purshad, (Plaintiff,) Respondent.

THIS suit is instituted to recover the sum of Company's rupees 103-6-9, being principal and interest, on arrears of rent due for 1253 and 1254.

The plaint sets forth that the plaintiff is the proprietor of 3 annas 4 gundahs within the whole 16 annas of the village Bhilaneer Moddun, pergunnah Mhula, the remaining 12 annas 16 gundahs thereof appertain to other sharers. The defendant took a lease of the plaintiff's share for five years, from 1253 to 1257 Fuslee, on an advance of rupees 100 without interest, on the rent of rupees 105-10-8 annually; stipulating, from that rent to pay 60 rupees into the collectorate, being the revenue of that share payable to the Government, and rupees 45-10-8 to the plaintiff annually, by instalments, for which a distinct instalment deed has been entered into.

The defendant, in his answer, does not deny the deeds, but alleges: after paying the revenue to the Government, the balance of rent was paid to the plaintiff by instalments to the extent of rupees 42, in the years 1253 and 1254 Fuslee. In the year 1254 Fuslee the proprietors of two other villages disputed the boundary of this village, whereby an expense of 35 rupees was incurred, which was discharged by him by the instruction of the plaintiff, whereby there is a surplus due to him on account of the years 1253 and 1254 Fuslee; for one instalment payment of rupees 30 in the year 1253, the plaintiff granted no receipt, and intimation thereof was made by petition to the collector, who merely passed an order thereon to be kept in the office.*

The moonsiff decreed in favor of the plaintiff, on the grounds that the receipts of the defendant have not been established, and the tunkwah (or assignment on the revenue) filed by the defendant, does not bear thereon the payment of the money, nor has the defendant specified how the expense of the 35 rupees was incurred, and to whom paid; moreover, the defendant acknowledges the lease and the counterpart thereof.

From this decision the defendant appealed, urging: on the part of the respondent, plaintiff, no proof has been filed or established. It was necessary for him to have filed a wassil-bakee (receipt and balance account,) and to prove the same by the evidence of the put-warree and mutsuddee. His own allegations have been proved, by

the receipts filed and evidence of witnesses, which the moonsiff has not taken into due consideration. With regard to the payment of the assignment on the revenue, the moonsiff should have made enquiry, by taking the evidence of Chutterdarree Lall, the mutsuddee, or writer of the plaintiff.

COURT.

This suit is instituted on the basis of a lease, and a distinct deed of instalment, for the payment of the rent, which have not been filed, nor called for, which should have been done, in order to ascertain whether the documents had been written on proper stamps, and their authenticity should have been proved by evidence of witnesses. It is true the defendant does not deny the execution of the documents, yet the Circular Letter, No. 35, dated 25th of November 1847, directs that, notwithstanding the defendant's acknowledgment of the document, the evidence of the subscribing witnesses to the document is to be taken. The plaint states that it is specified in the stipulation: if three instalments become due, the plaintiff may resume the lease. There being no mention in the proceedings, under what circumstance the plaintiff forbore to carry the conditions of the contract into execution for the period of two years, impresses the mind with suspicion that both parties have colluded in some deceitful measure in this suit. With a view to clear this doubt, it will be necessary to call on the plaintiff to prove his right to the share of 3 annas 4 gundahs in the village, by filing documental proof, and establishing the same by evidence of witnesses, or by document from the collectorate, to which evidence of witnesses will not be necessary. When the defendant had filed his receipts and assignment on the revenue, it was incumbent on the moonsiff to have called on the attorney of the plaintiff, or on the plaintiff himself, to admit or disallow the documents filed by the defendant, and on the plaintiff's mutsuddee (or writer) Chatterdarry Lall, to ascertain whether the documents were under his handwriting, and effected under the orders of the plaintiff. From the above circumstances, it is clear the investigation is incomplete. Therefore, ordered, the decision of the moonsiff be reversed, and the case be returned for re-investigation on the points above indicated.

The amount of stamp of the appeal plaint be returned to the appellant.

THE 19TH APRIL 1850.

No 291.

Regular Appeal from a decision passed by Moulree Munneeroodeen Hossein, Moonsiff of Mhowah, dated 27th March 1848.

Anunt Loll, (Defendant,) Appellant,

versus

Beince Ram, Mudhoo Ram, Musst. Ruttun Koonwar, widow of Suromun Loll, the sons of Surdar Ram, Muddoo Loll and two others, the sons of Keertah Ram, (Plaintiffs,) Respondents.

THE amount of action is laid at Company's rupees 19-1-9, being three times the amount of the annual revenue of the property under litigation, and the suit instituted for the possession of 18 gundahs 3 cowries within 1 anna, and that within 6 annas of the whole village Sondo Bhurbullub, chuckla Gorejole, purgunnah Beesarah.

The plaint sets forth: formerly Surdar Ram purchased 8 annas of the village, of which he sold 2 annas to Achumbit Loll, retaining possession of the 6 annas, which descended in regular succession from their ancestors to themselves. In 1235 Fuslee, the abkaree lease from Government having fallen into balance, to discharge it, the sons of Surdar Ram sold 3 annas portion to Button Loll and Gomanee Loll under bill of sale, dated 19th of Assar the 2nd of 1235; then Kirpah Ram, the brother of Surdar Ram, sued for 4 annas share of the 8 annas, on the investigation of the additional principal sudder ameen, he obtained a decree on the 22nd of December 1830, which being appealed from to the judge's court, Kirpah Ram filed a solanamah, in which deducted portions were assigned to all respectively, and that to Tillock Ram was 1 gundah 1 cowree portion, and in conformity to the solanamah a decree was passed, dated 7th of July 1832, which amended the decision of the second principal sudder ameen. In 1240 Fuslee, we, in conjunction with Tillock Ram, leased our several portions to Button Loll and Gomanee Loll. About this time the rights and interests of Tillock Ram were advertised for sale, and sold at an auction sale in satisfaction of decree of court on the 10th of December 1833, and purchased by Lalljee Sahoo, from whom it was purchased by the defendant, Anunt Loll, under a bill of sale, dated 23rd July 1835, and was let in possession of 1 gundah 1 cowree. Afterwards the lessees instituted two distinct suits against Juggoo Noorbaff and Lochun Khan for arrears of rent in which case Anunt Loll filed a third party petition, alleging he was 1 anna sharer, whereon the moonsiff nonsuited the cases. On appeal before the additional judge, they were returned for re-investigation on the grounds: the suit was for 6 annas portion of rent, and the objection was for 1 anna only, therefore the nonsuit should have extended to 1 anna only, whereon Anunt Ram assumed the supposition that Tillock Ram

was seisin with 1 anna portion at the time of the auction sale, and has thereby dispossessed them of 18 gundas 3 cowrees portion, for which they now sue.

The defendant Anunt Loll alleged: the plaintiffs have instituted his suit after the expiration of twelve years from the date of auction, therefore not liable to be heard. The sons of Surdar Ram sold 3 annas portion, and retained possession of 3 annas portion. There were four brothers. The eldest was Tillock Ram, Bhado Ram, Beenee Ram, and Suromun Loll. Suromun Loll and his son, Jungoo Loll, are both dead without issue. The widow agreeably to Hindoo law has no right of claim to the property. The remaining three brothers each held possession of 1 anna, respectively. The share of Tillock Ram was sold at auction: from the purchaser thereof the defendant effected his purchase.

The defendants Lalljee and Tillock Ram failed to file any answer to plaint.

The moonsiff decreed in favor of the plaintiffs, on the grounds: from the appeal decision passed by the former judge, Mr. John Dashwood, filed by the plaintiffs in case No. 230, in which Rutton Loll and Gomance Loll are plaintiffs *versus* Juggoo Noorbaff defendant, it appears 1 gundah 1 cowree is assigned to Tillock Ram agreeably to the specification in the solanamah filed in that appeal case. And from copy of the proceeding of auction sale that portion only was sold as the rights and interest of Tillock Ram, and the auction purchaser merely sold, under bill of sale, the rights and interests of Tillock Ram, to the defendant, Anunt Ram, who is not entitled to any further portion, and his allegations are false. The suit of the plaintiffs is in every way correct and just.

The defendant Anunt Ram appealed from this decision, alleging: the decision taken by the moonsiff as a proof for this suit was collusively obtained. The plaint is not liable to be heard under the limitation rule. Tillock Ram was in possession of 1 anna portion at the time of the auction sale, consequently he is entitled to that portion.

The respondents answered: this suit does not fall under the limitation rule, the dispossession not having occurred until after the additional judge passed the order for the re-investigation of the revenue cases in July 1847.

COURT.

The appellant pleads this case is barred by the rule of limitation, as he has been in possession of 1 anna portion of the village more than twelve years prior to the institution of this suit. In proof thereof, alleges that Tillock Ram was seisin with 1 anna portion, arising from a proportionable portion devolving to him of the share held by Suromun Loll, on the demise of Suromun Loll and his minor son, Jungoo Loll, without issue, prior to the auction sale, in satisfaction of decree of court, of the rights and interests of Tillock Ram, which

sale took place on the 10th of December 1833, and was purchased by Lalljee Sahoo, from whom the appellant purchased the property, that is, the rights and interests of Tillock Ram, under bill of sale, dated 23rd of July 1835, and was let into possession of 1 anna portion, as the answers to plaints filed by two ryots in the revenue cases against them.

From the two decisions filed in this case, under Nos. 23 and 24, the first being a decision of the moonsiff of Mhowah, dated 3rd of August 1836, the other being the appeal decision, dated 23rd of November 1837, (confirming the decision of the moonsiff,) in the first Jungoo Loll, the minor son of Suromun Loll, is one of the plaintiffs, and in the latter he is one of the respondents; by these decisions it is evident Jungoo Loll was in existence three and four years subsequent to the auction sale, consequently no portion of the share of Suromun Loll could have devolved to Tillock Ram, prior to the auction sale of that person's rights and interests in the village, arising from the existence of his minor son, Jungoo Loll, who was sole heir to the property of his father, Suromun Loll. On the point of the appellant having been let into possession of 1 anna portion, this court verbally required from the attorney of the appellant, to adduce the paper giving the appellant possession of 1 anna portion, and copy of the appellant's receipt that he had obtained possession of 1 anna portion. The attorney replied, neither had been effected, for possession was given by mere proclamation. The answers of the ryots filed to the plaints in the revenue cases do not aver the appellant was let in possession of 1 anna portion; but that the appellant forcibly took the rent from them: this is no proof of possession, but of extortion. The whole of the appellant's proofs having been shown to be false, this suit is not considered to be barred by the limitation rule. With respect to the solanamah appeal decision having been collusively obtained, is not a point to be investigated in this case, but is now considered to be just and a valid document in proof of the point under litigation whether 1 anna, or 1 gundah, 1 cowree only were sold at auction: for the decision is dated 7th July 1832, eighteen months prior to the auction sale, and the moonsiff was perfectly correct in taking it in proof for his decision.

The respondents attribute dispossession to the order passed by this court, in admitting that the moonsiff might have nonsuited the revenue cases to the extent of 1 anna portion claimed by the third party, and not to the whole of the demand under which cause the cases were returned for re-investigation. This court did not decree any portion to either party, thereby could not have disposed any portion from either party. Nonsuits are merely temporary suspension of the claim and may again be renewed. It is evident the defendant is merely entitled to 1 gundah 1 cowree portion, and there is no cause to interfere with the decision of the moonsiff; therefore,

ordered, that the decision of the moonsiff be affirmed, and the appeal dismissed, with costs of both courts chargeable to the appellant.

THE 19TH APRIL 1850.

No. 292.

Regular Appeal from a decision passed by Moulree Syud Munneerooddeen Hossein, Moonsiff of Mhowah, dated 27th March 1848.

Anunt Loll, third party, (Plaintiff,) Appellant,

versus

Rutton Loll, Goomanee Loll, and Tuchun Khar, (Defendants,) Respondents.

THIS suit was instituted to recover the sum of Company's rupees 10-9, being arrears of rent due on the cultivation of 2 beegahs 19 biswas of land, situate in village Sondo Bheerbullub, chukla Gorejole, pergunnah Beesarah, from 1244 to 1252 Fuslee.

This suit was originally nonsuited by the moonsiff on the 13th of December 1845, and on appeal therefrom was by this court returned for re-investigation, for particulars *vide* the printed Decisions of the Zillah Court for the month of July 1847, zillah Tirhoot, pages 178 and 179, Nos. 43 and 44. The moonsiff, on re-investigation of the case, decreed the whole amount sued for, on the grounds that Beinee Ram and others, plaintiffs, sued Anunt Loll for their proprietary right in case No. 412, just decided, in which it was proved Anunt Loll was entitled to 1 gundah 1 cowree only, and 8 gundahs 3 cowrees were decreed to the proprietors: hence the claim of the lessees to the portion of rent sued for is correct.

The third party, Anunt Loll, appealed from the above decision, urging: he had appealed from the decision passed in proprietary right case, with which this case is involved, he hopes that appeal will be deemed sufficient for this, and that the trial of both will take place at the same time.

COURT.

The reasons assigned by the moonsiff in his decision are deemed conclusive: therefore, ordered, the decision of the moonsiff be affirmed, and the appeal dismissed, with costs of both courts chargeable to the appellant.

THE 19TH APRIL 1850.

No. 293.

Regular Appeal from a decision passed by Moulvee Syud Munneerooddeen Hossein, Moonsiff of Mhowah, dated 27th March 1848.

Anunt Loll, third party, (Plaintiff,) Appellant,

versus

Rutton Loll, Gomanee Loll, and Juggoo Noorbaff, (Defendants,) Respondents.

THIS suit is instituted to recover the sum of rupees 9-10-6, being arrears of rent, on the cultivation of 3 beegahs 1 biswa of land, situate in village Sondo Bheerbullub, chuckla Gorejole, pergunnah Beesarah.

COURT.

This case is in every respect similar to case No. 292, and the same decision is passed in this as in that.

THE 22ND APRIL 1850.

No. 297.

Regular Appeal from a decision passed by Moulvee Syud Munneerooddeen Hossein, Moonsiff of Mhowah, dated 25th March 1848.

Girdharry Loll and Kurkdharry Loll, (Defendants,) Appellants,

versus

Tillukdharry Singh and two others, sons of Durreo Singh, deceased, (Plaintiffs,) Respondents.

THIS suit is to recover the sum of Company's rupees 20-13-1½, being the arrears of rent due from 1249, to the instalment of 10 annas rent of 1255 Fuslee, on 4 beegahs 8 biswas cultivation, situate in village Rusevee Luchheeram, chuckla Gorejole, pergunnah Beesarah.

The plaint sets forth: Beesarut Ali, a proprietor of the above-mentioned village, leased to Durreo Singh, the father of the plaintiffs, 4 annas portion thereof, of which they are in possession to this day. The village is held as joint property by all the sharers. The defendants being cultivators of 4 beegahs 8 biswas within the village, not having paid the quota of rent on the plaintiffs' lease, hence this suit.

The defendants plead: they are 2 annas sharers of the village. They cultivate 4 beegahs of land, but no rent is paid thereon, as all the proprietors cultivate land, and pay no rent. Their own share is leased, and they pay no rent to the lessee.

The moonsiff decreed in favor of the plaintiffs, on the grounds: the evidence of the putwarree and that of other witnesses adduced by the plaintiffs prove their claim. The defendants acknowledge

cultivating the land to the extent of 4 beegahs, and object to payment of rent as the plaintiffs themselves cultivate land and pay no rent, this cannot be listened to. If the plaintiffs cultivate land and will not pay rent on account thereof, the defendants' lessee can sue for it.

The defendants appealed from the above decision, urging: the plaintiffs have filed no document, bearing their (the defendants') signature, and the plaintiffs have been lessees for a very long time, during which period they never demanded rent. The moonsiff should have ascertained the cultivation of both parties, not having so done, and the witnesses, who gave their evidence, being in the employ of the plaintiffs, has passed an erroneous decision.

COURT.

The lease, on which this suit is based, is not filed, nor called for by the moonsiff, which was necessary to ascertain whether it be written on a proper stamp, and it should have been verified by the evidence of the subscribing witnesses thereon. The original accounts of the village for three years prior to the demand of rent in this suit should have been called for, viz. for 1246, 1247, and 1248 Fuslee, to ascertain therefrom what had been the cultivation of the defendants in those years, and what rent they had paid in those years, and the defendants should have been called on to adduce the other proprietors of the village, to ascertain from their evidence whether or not it was customary to pay rent for the land they cultivated. Such measures not having been adopted, show the investigation was incomplete. Therefore, ordered, the decision of the moonsiff be reversed, and the case returned for re-investigation on the points above indicated.

The amount of stamp of appeal plaint be returned to appellant.

THE 22ND APRIL 1850.

No. 302.

Regular Appeal from a decision passed by Moulree Synd Munneerooddeen Hosseing Moonsiff of Mhowah, dated 27th March 1848.

Ruttun Goalah, (Defendant,) Appellant,

versus

Shaik Teig Ali *alias* Cha Cowree and two others, (Plaintiffs,) Respondents.

THE action is laid at Company's rupees 50-5-9, being principal and interest of arrears of rent from 1253 to 8 annas instalment of rent of 1255 Fuslee, on the cultivation of 4 beegahs 4 biswas of land, situate in village Mohonepore Essur, chuck Kusroo, pergunnah Hajypore.

The plaint states: that within the 16 annas of the abovementioned village 8 annas share is the property of Teig Ali, one of the

plaintiffs, and 4 annas belong to the other two plaintiffs; the cultivation of this 12 annas is distinct from the other 4 annas of the village. The defendant not having paid the rent of his cultivation, they therefore sue him for the rent, &c.

The defendant appointed attornies, but filed no answer to plaint.

The moonsiff decreed in favor of plaintiffs, on the ground: the account of receipts and balances filed by the putwarree, and evidence of witnesses adduced by the plaintiffs prove their claim. The defendant has not filed any answer.

Defendant appealed, urging: he appointed two attornies, Nund Lall and Radha Bullub, and placed in their hands answer to plaint, if they had not filed it, the fault was not his. It was necessary for the moonsiff to have called on the attornies for the answer, which he did not do. The rent agreeably to the past years was paid for a portion thereof, he retains receipts, and in proof of that portion, for which no receipt has been given, will adduce witnesses. The increased rent required by the plaintiffs, without proclamation enjoined by Regulation V. 1812, is not attainable by them.

COURT.

This suit was instituted on the 12th of January 1848: on the 22nd of February an order was passed for an *ex parte* investigation: three days after, on the 25th of February, the defendant appointed attornies to defend his case. In his appeal he has not stated why he did not appoint attornies, and give them the answer to file, prior to the order for the *ex parte* investigation: this would bar notice of his appeal; but from the great irregularity perceptible in this case, viz. notice of this suit was issued to defendant on the 12th of January, a return of *non est inventus* was made on the 14th of January, on which date an order was passed that a proclamation be issued for the attendance of the defendant; it was issued on 4th February, the nazir's return thereof is dated 19th of February, stating two witnesses were present to give evidence of the due execution of the proclamation. The moonsiff's order on the same document to take the evidence of the witnesses, and to file the same in the suit, is dated 11th of February. The evidence of the witnesses appears to have been taken on the 5th of February, and in their evidence they state the execution of the proclamation took place on the 19th of Maugh 1255 Fuslee, which, on referring to the book of general eras, corresponds with the 8th February 1848. From these discrepancies it is doubtful whether the proclamation was ever issued; and the moonsiff not having asked the appointed attornies why the answer to the plaint was not filed, the appellant has a claim to benefit by that doubt. Hence the investigation is considered incomplete. Therefore, ordered, the decision of the moonsiff be reversed, and the case returned for re-investigation entirely anew. The amount of stamp of appeal plaint be returned to appellant.

THE 23RD APRIL 1850.

No. 316.

Regular Appeal from a decision passed by Moulee Syud Mohummud Mohamid Khan, Sudder Ameen of Moosufferpore, dated 23rd April 1847.

* Duryah Raoot, (Plaintiff,) Appellant,

versus

Sheehoonundun Takoor and six others, (Defendants,) Respondents.

THE amount of action of suit is laid at Company's rupees 442-13, being the principal and interest of a loan of rupees 275 taken by the defendants on bond dated 15th of Bysack 1248 Fuslee, to be paid at the end of Sawun of the same year. The defendants not having discharged the bond, he therefore sues them.

The defendants Ramslewuk Takoor and Sheeboodyal Takoor, in separate answers, acknowledge the plaintiff's demand.

Sheehoonundun Takoor and four others deny having taken the loan or having signed the bond; allege, they reside 16 coss from the plaintiff's, they had no cause to borrow any money, if they had, there are several wealthy persons residing in their own village, from whom they could effect a loan without proceeding 16 coss for it. Between the other defendants who have acknowledged the plaintiff's claim and themselves there is an enmity subsisting; if they have inserted their names with their own in the bond, they are not accountable. They can write, and by comparing their supposed signature on the bond with other documents, the difference in the handwriting will be discerned.

The sudder ameen, in his decision, states: two of the defendants have acknowledged the plaintiff's claim; the other defendants deny having taken the money or executed the bond, although the subscribing witnesses to the bond deposed that all the defendants were present at the execution of the bond and took the money, yet the attestation of Sheehoonundun is not proved: for the evidence of the defendants' witnesses prove the defendants were on the date of the bond at the house of Aluck Takoor at the obsequies of his chuchee 16 coss distant. The signature of Sheehoonundun on the bond does not correspond with that of his signature on the proclamation for the attendance of the defendants to answer to suit. Decreed in favor of the plaintiff against the two defendants, who have acknowledged his claim, and the other defendants are exempt from liability.

The plaintiff appealed from this decision, urging: the evidence of the subscribing witnesses proved that all the defendants were present at the execution of the bond and took the money. The defendants are all relations, and reside together as one family, and there is no quarrel between them. The sudder ameen states the signature of Sheehoonundun Takoor on the bond does not correspond with his signature on the proclamation: it is in his power to write differently whenever he pleases.

The respondents answered the bond is a fabrication, by the collusion of the defendants who acknowledged the claim with the plaintiff, &c.

COURT.

Owing to the contradictory evidence of the witnesses on both sides, it was deemed necessary that the witnesses, who had given their evidence in the court of the sudder ameen, should attend this court, in order to be interrogated by this court, to elicit, if possible, the truth of the litigation. The appellant adduced three witnesses, whose names are subscribed to the bond, who had given their evidence in the court of the sudder ameen, and one other witness to the point that the defendants wished to adjust the matter after the suit had been instituted. The respondent adduced one witness only of the three, who had given their evidence in the primary court, alleging the others were not to be found. The appellant's three witnesses to the bond were interrogated by this court, by which some very trifling discrepancies were elicited, but not sufficient to vitiate their evidence or invalidate the bond. The other witness of the appellant being a single witness only on another point, and the one witness on the part of the respondents being also a single witness only, and as the evidence of single witness cannot prove any point in court, these single witnesses were not interrogated. From the perusal of the papers of the case it would seem the sudder ameen decreed in favor of the plaintiff against the two defendants who acknowledged the plaintiff's claim, and exempted Sheehoonundun and the other four defendants, on the grounds their witnesses had proved an *alibi* for them, by deposing that these defendants had for some days attended the obsequies, ceremonies of Alluck Takoor ka chuchee at Bishenpore Sinkaree, 16 coss distant from the plaintiff's on the very day the bond was dated. Now these defendants, in their papers of pleading, made no mention of the demise of the wife of the brother of Alluck Takoor's father, nor of their being at the ceremonies of her obsequies, hence the defendant's witnesses must have been tutored to prove an *alibi* not pleaded, consequently their evidence cannot be depended on. Decision of the sudder ameen cannot be maintained. Therefore, ordered, the decision of the sudder ameen be reversed, and decree for appellant against all the defendants, respondents, who are chargeable with costs of both courts.

THE 24TH APRIL 1850.

No. 306.

*Regular Appeal from a decision passed by Kasee Mohummud Allum,
Moonsiff of Coelee, dated 29th March 1848.*

Bunsraje Race, (Plaintiff,) Appellant,

versus

Maneek Raoot and Soonphul Raoot, (Defendants,) Respondents.

THIS suit is for the recovery of Company's rupees 61-15, being the principal and interest of a loan on bond, dated 28th Chyte 1253 Fuslee.

The plaintiff states that the defendants borrowed the sum of rupees 52 on bond, dated 28th of Chyte 1253 Fuslee, to be paid at the end of the month of Bysack of the same year: not having to this period discharged the bond, he therefore sues for the amount, with interest.

The defendants allege: they never borrowed the money or executed the bond. They are poor chowkeedars, and had no weddings to require so large a sum. The plaintiff's suit arises from enmity, which is this: their chowkeedaree allowance not having been paid by the plaintiff, they complained to the magistrate, who issued an order to the thannadar of Reejah; after the plaintiff's property was attached and advertised for sale, he paid the money for their wages, hence the cause of this false suit.

The moonsiff dismissed the suit, on the ground: on perusal of copy of an order from the magistrate, dated 8th October 1847, and return thereto of the mohurrer of thanna Reejah, and the evidence of witnesses adduced by the defendants, their allegations are proved. The bond of the plaintiff appears to be fabricated, if it was genuine they would have produced it when the mohurrer of the thanna proceeded to enforce the payment of the chowkeedaree allowances.

From this decision the plaintiff appealed, urging: the chowkeedaree allowances are collected by the Government, at which to mention the circumstance of the bond was not necessary; but it was stated to the mohurrer, who said to sue for it in the court. The bond is not fabricated, and notwithstanding it was proved by the evidence of witnesses, the moonsiff unjustly dismissed the case.

COURT.

The bond appears to be made payable in one month and two days from its date: how was it possible for two chowkeedars, with wages of 3 rupees each, to effect so speedy a repayment? It is unaccountable the bond was more than a year overdue, when the mohurrer of the thanna attached the property of the plaintiff, on account of the chowkeedaree wages; if genuine, it would have undoubtedly been then adduced as a set-off against the chowkeedaree wages. In the appeal it is stated, the circumstance of the bond was mentioned to the

mohurrer of the thanna, which is not mentioned in the plaint, or the replication, in which it was called for by the answer of the defendants to the plaint: that the non-insertion of circumstance in the replication cannot be deemed an oversight, but the insertion of it in the appeal a falsehood. The reasons assigned in the decision of the moonsiff for the dismissal of the case being deemed correct, it must be upheld; therefore, ordered, the decision of the moonsiff be affirmed, and the appeal dismissed, with costs of both courts chargeable to the appellant.

THE 24TH APRIL 1850.

No. 310.

Regular Appeal from a decision passed by Pundit Data Ram, Moonsiff of Teigrah and Beegoo Surai, dated 5th April 1848.

Delawur Singh, (Plaintiff,) Appellant,

versus

Luchmee Raee, (Defendant,) Respondent.

THIS suit is instituted to recover the sum of Company's rupees 9-5-9½, being principal and interest on the proprietor's share on the sale of kunra and moonje, the produce of land situate in village Khoont Toolseepore, pergunnah Mulkee, from 1249 to 1254 Fuslee, agreeably to the putwarree's account.

The plaint sets forth: of the whole 16 annas of the abovementioned village 7 annas ½ pie is his (the plaintiff's) hereditary property, and 2 annas 2½ pie as heir to Fukeera Lall and Nauthbuksh, deceased, whereby he is proprietor of 9 annas 3 pie of the village. The defendant on the land Budah Buddeeah annually cultivates, reaps, and carries away kunra and moonje, and sells the same without paying the proprietor's share thereof; therefore sues for the same after the deduction of the share of the other proprietors.

The defendant, in answer, alleged: the land on which kunra and moonje are produced does not appertain to the plaintiff. The quantity is 1 beegah 10 biswas, situate in village Kurmole, and has been in his cultivation under lease and kubooleut for thirty years; the rent thereof is paid to the proprietors of the village Kurmole; the plaintiff is not heir to Fukeera Lall and Nauthbuksh, &c.

Bukt Lall, and Musst. Deehoo Moorut Punditæn filed distinctly third party petitions in corroboration of the defendant's answer, that the land in question appertains to their village Kurmole.

The moonsiff dismissed the suit, on the ground: on full consideration of the defendant's answer, the petitions of the third parties, and the report of the ameen, who was deputed to the spot to make necessary enquiries, it appears to be a boundary dispute.

From this decision the plaintiff appealed, urging: from the measurement of the amlah of survey department the spot in question is included in his village, it is no dispute regarding boundary

land, the defendants and the third party petitioners have colluded together, and the decision of the moonsiff is not just.

COURT.

From perusal of the papers of the case there is every reason to believe the decision of the moonsiff is correct: for the plaintiff, in his replication, alleges the land is within the boundary of his village as ascertained by the measurement formed by the amlah of the survey department; from this and the evidence of the putwarree that no rent had ever been levied from the defendant, and the suit is for six years' right of a portion of the produce of the land, which demand seems to have been created subsequently to the survey, and from the report of the ameen it is doubtful to which village the land appertains; therefore, ordered, the decision of the moonsiff be affirmed, and the appeal dismissed, with costs of both courts chargeable to the appellant.

THE 27TH APRIL 1850.

No. 503.

Regular Appeal from a decision passed by Syud Ashruff Hossein, Second Principal Sudder Ameen of Moozufferpore, dated 19th July 1847.

Baboo Juggurnauth Singh and Baboo Berje Beeharee Singh, guardian of Hurbunsenarain, minor son of Berje Lall Singh, (Defendants,) Appellants,

versus

Mr. W. Howell, since his demise Mr. Gale, (Plaintiff,) Respondent.

THIS suit is for the recovery of Company's rupees 1,735-10, being the amount of forfeit payable by the defendants.

Purport of the plaint is: that Berje Lall Singh and Juggurnauth Singh, proprietors of Hoosapore, pergunnah Ruttee, granted a pottah, or in other words, entered into a written agreement to cultivate 75 beegahs of land with indigo, in the abovementioned village, for 7 years, from 1246 to 1252 Fuslee; the deed is dated 23rd of April 1838, corresponding with 15th of Bysack 1255 Fuslee, and therein stipulating that such land as the gentleman, or the amlah of the factory shall select for the cultivation of indigo, will be caused to be cultivated. In such year the gentleman wishes to change the spots of cultivation to another, it shall be effected. Whatever direction the gentleman may give regarding the ploughing, weeding, and cutting of the indigo will be conformed to. At the end of the year the fields are to be measured by the gentleman of the factory, and to pay the share of rent of the proprietor, and of the ryot for the first sort, 6 rupees per beegah, and for the second sort 3 rupees per beegah, and for such land on which stubble is retained to be charged with rupees 2-4 per beegah. These being calculated, the advance made is to be deducted therefrom, and, if there be any balance, to be accounted for. If

the conditions of the agreement be not fulfilled by deficiency in the quantity of land, and for such land as may be deficiently cultivated whereby damage be sustained, to pay a forfeit of rupees 12-8 per beegah. A deficiency in the quantity of land having occurred every year on measurement, therefore sue for the amount of forfeit on the deficiency of the land not cultivated with indigo.

The defendants under one stamp filed their answer distinctly. Juggernauth Singh, in his answer, alleged: the execution of the deed for 75 beegahs of land he does not deny, but there was not so great a deficiency as stated by plaintiff, a large quantity of land has been concealed, and this suit instituted. Every year agreeable to the selection of amlah of the factory, such land was caused by him to be cultivated by his ryots; such quantity of indigo seed as was sent, which belonged to the gentleman, was sown; and such fields as were not sown was the fault of the plaintiff; he himself has a claim of damages on that account. The suit of the plaintiff is false. The answer of Berje Beeharee Singh alleged: he was not the guardian of Hurbunsenarain, who is the minor son of Juggernath Singh, the other defendant, whereby the suit against him is unjust.

The second principal sudder ameen decreed in favor of plaintiff against both defendant, on the grounds: the objections of the defendants are not correct; if they were true, they would have on each succeeding year urged their dissatisfaction and obtained adjustment thereof. The suit of the plaintiff, in his opinion, is in every way right and just.

The defendants, being dissatisfied with this decision, appealed therefrom. Berje Beeharee Singh urged that, although he had, in his answer to plaint, alleged he was not the guardian of Hurbunsenarain, who was the minor son of the other defendant, and that he was unjustly sued, the principal sudder ameen took no notice thereof, decreed against him unjustly, and hopes to be exempted from liability. Juggernath Singh urged the decision of the principal sudder ameen was unjust: if the circumstance of the deficiency was occasioned by him, the plaintiff would have sued on the following year for the forfeit on the deficiency of the previous year.

Respondent, in his answer, alleged: the decision passed in the first instance is a sufficient answer, and it corroborates the plaint.

COURT.

One of the defendants, Berje Beeharee Singh, alleged, in his answer to plaint, that he was not the guardian of Hurbunsenarain, who was the minor son of the other defendant. The plaintiff, in his replication, made no reply thereto, which is a tacit acknowledgment of that point. The second principal sudder ameen took no notice of that allegation, which was necessary to have been done, by taking evidence of witnesses to ascertain the truth or otherwise of the allegation, and thereby to judge whether the suit was tenable or

liable to nonsuit from suing a wrong individual ; but in lieu of making any enquiry on this head, decreed against an individual, who seemingly has no concern in the suit, which shows the decision of the second principal sudder ameen is incorrect, and also that the investigation of the suit is incomplete. Therefore, ordered, the decision of the second principal sudder ameen be reversed, and the case returned for re-investigation on the point above indicated. The amount of stamp of the appeal plaint to be returned to the appellant.

THE 27TH APRIL 1850.

No. 312.

Regular Appeal from a decision passed by Pundit Data Ram, Moonsiff of Teigrah and Beegon Surai, dated 4th April 1848.

Bulwunt Race, (Plaintiff,) Appellant,

versus

Musst. Indurraim, widow, mother and guardian of Gazec Raee and Kashee Raee, minor sons of Tara Raee, deceased, and Shoomerrun Raee, brother of Tara Raee, deceased, (Defendants,) Respondents.

THE amount of action is laid at Company's rupees 109-12-2, being the principal and interest of a loan of Sicca rupees 85, borrowed by Tara Raee, the ancestor of the defendants, for which sum a bond was granted under date 2nd Phalgun 1253 Fuslee, to be discharged at the end of Poose 1254 Fuslee. Tara Raee, without discharging the bond, died in the month of Bhadoon 1254 F. S. The defendants being heirs, and in possession of the property of the demised Tara Raee, and the demand of payment of the bond having been made without success from the heirs, hence this suit.

Shoomerrun Raee, defendant, in his answer, asserts, Tara Raee executed a bond, but, on the 15th of Poose 1254, paid to the plaintiff 80 rupees, who granted a receipt for the sum, which is forthcoming.

The defendant Indurraim Koonwur filed a similar answer to the above.

The moonsiff decreed for the plaintiff the sum of rupees 14-8, on the grounds: the payment of rupees 80 to the plaintiff by Tara Raee is proved by the evidence of witnesses adduced by the defendants. The remaining rupees 5 and interest are payable by the defendants to the plaintiff.

The plaintiff appealed from the above decision, urging: the receipt adduced by the defendants is a fabrication ; if rupees 80 were paid, why was the 5 rupees not paid at the same time? On the date of the receipt he (the plaintiff) was at Monghyr, which copy of a brief abstract from the thanna report book will prove. The moonsiff did not compare the signature on the receipt with other signatures of his.

COURT.

The abstract from the thannadaree book is not admissible in the appeal, not having been adduced in the original suit. From the deposition of the mohafez of the foudarry court it appears the plaintiff attended the foudarry court four days after the date of the receipt, and the moodee's evidence is not to be depended on; particularly on glancing over the thanna report, the plaintiff is stated to have been present at the thanna Reejah on the 15th of Poose, consequently he could not have been at Monghyr from the 1st of Poose to the end of that month. On comparing the signature of the appellant on his power of attorney in the original suit, with that on the power of attorney in the appeal, they are differently written, and three letters in the latter power of attorney are different from those in the former. From these circumstances there is no cause to interfere with the decision of the moonsiff. Therefore, ordered, the decision of the moonsiff be affirmed, and the appeal dismissed, with costs of both courts chargeable to the appellant.

THE 27TH APRIL 1850.

No. 315.

Regular Appeal from a decision passed by Moulvee Munneerooddeen Hossein, Moonsiff of Mhowah, dated 7th April 1848.

Hurlall Singh, (Defendant,) Appellant,

versus

Shureebjeet Singh, (Plaintiff,) Respondent.

THIS suit is for the recovery of Company's rupees 292-4, being the principal and interest on a loan effected on security and bond, dated 1st of Assar 1249 Fuslee. The principal amount borrowed was rupees 175, on the security of Zalim Singh, who made himself responsible for the payment of the loan if the borrower did not discharge the amount.

Hurlall defendant alleged: he did not know the plaintiff or Zalim Singh, the security. That he did not borrow any money nor execute the bond, which is dated 1st of Assar 1249 Fuslee, on which date he was at Narainpore, purgunnah Mulkee, a great distance, on the other side of the river Gunduck, from the house of the plaintiff, hence how could he have executed the bond on that date? The plaintiff has instituted this suit from enmity.

Zalim Singh, the security, allowed the case to go by default.

The moonsiff decreed in favor of plaintiff, against both the defendants, on the grounds: from the evidence of four subscribing witnesses to the bond the claim of the plaintiff is proved, and the defendants have not established their allegations.

From this decision one of the defendants appealed, urging : the bond is a fabrication, and moreover the bond and security deed are written on one stamp, which is contrary to Circular letter, dated 27th of October 1837, Government Order, dated 8th of June 1838, and Construction No. 333, dated 6th July 1821 : the decree of the moonsiff is not just.

COURT.

The bond and deed of security are written on one and the stamp of the value of one rupee only, in lieu of that of 2 rupees to be admissible as evidence against the borrower and security, both of whom are made liable for the debt by the moonsiff, hence his decree is incorrect, by oversight of Circular 27th of October 1837, and Construction No. 1147, dated 27th of April 1838. The document should have been returned to the plaintiff to have the requisite stamp affixed thereon, to make it a legal evidence against both the borrower and surety. Therefore the decision of the moonsiff is reversed, and the case returned for re-investigation on the point above indicated. The amount of stamp of the appeal plaint to be returned to the appellant.

ZILLAH TWENTY-FOUR PERGUNNAHS.

PRESENT: H. T. RAIKES, Esq., JUDGE.

THE 3RD APRIL 1850.

Case No. 18 of 1850.

Appeal from a decision of Mr. Wright, Sudder Moonsiff, passed on the 13th December 1849.

Surrosuttee Dabee, (Plaintiff,) Appellant,

versus

Burkhurdar Jemadar, (Defendant,) Respondent.

THIS case is the same as No. 27, tried this day. It is returned to the moonsiff for the reasons mentioned in that decision, and the moonsiff, in re-trying the suit, will also re-consider his order regarding the denial to plaintiff, of interest on the amount of rent claimed. That should depend upon whether the defendant has wilfully withheld payment, or whether plaintiff neglected to demand it. Stamp fees to be returned.

THE 3RD APRIL 1850.

Case No. 27 of 1850.

Appeal from a decision of Mr. Wright, Sudder Moonsiff, passed on the 13th December 1849.

Burkhurdar Jemadar, (Defendant,) Appellant,

versus

Surrosuttee Dabee, (Plaintiff,) Respondent.

PLAINTIFF sued for the rent of beegahs 3 1-10th of land at rupees 5, 1 anna, 1 gundah, 1 cowrie per annum.

Defendant pleads that plaintiff's claim has already been dismissed in another case for seven of the eight years, the rent of which she claims, and that one year's rent is only due to her.

The moonsiff observes that it is stated, in a former decision of his court, that defendant had not established payment of his rent, and therefore, on that ground, he decrees to plaintiff the whole rent claimed.

I observe that the decision alluded to by the moonsiff did not decide any thing in favor of plaintiff, and cannot be taken as proof, in this case, that defendant has not paid the rent as pleaded by him. The moonsiff's decision is unsatisfactory. I therefore return it

to him, and he will take into consideration the proof of payment of rent offered by defendant, appellant, and decide the case. The appellant to receive back his stamp fees.

THE 3RD APRIL 1850.

Case No. 42 of 1849.

Appeal from a decision of Roy Hurro Chunder Ghose, Principal Sudder Ameen, passed on the 28th June 1849.

Bhyrub Chunder Sein, (Plaintiff,) Appellant,

versus

Omdatten Neissa Khanum, Fatema Khanum, widows, heiresses and personal representatives of Moonshee Hossein Ally, deceased, Moulvee Surfooddeen Mahomed, and Buzlall Roheem, (Defendants,) Respondents.

CLAIM, for the recovery of 780 rupees, including principal and interest.

The plaintiff was respondent in a case appealed to the Sudder Dewanny Adawlut, and states that he gave a vakalutnamah to Hossein Ally deceased, and paid him in advance the sum of rupees 390, as fees for his professional services, but the vakeel died while the case was pending without rendering him any service, and he was obliged to entertain another vakeel, who conducted the case till its termination. He now sues the legal heirs and representatives of Hossein Ally, for double the amount paid as principal and interest, having in vain demanded from them a refund of the money.

Those of the defendants, who acknowledged themselves to be the legal representatives of Hossein Ally deceased, replied that Hossein Ally lived nine months after the date of filing the vakalutnamah, during which time he performed such professional services as were required on his part, and that plaintiff had never demanded from them restitution of the money as alleged by him.

The principal sudder ameen dismissed the plaintiff's claim, on the grounds that the general circumstances stated by him in his claim, were not substantiated by the evidence adduced in support of them, and that although the amount of fees paid had been agreed upon according to Clause 5, Section 2, Regulation XII. 1833, no amount was specified in the vakalutnamah as directed by that Section, and it was therefore impossible to determine the exact amount actually paid by plaintiff, or to assume that the remuneration had been received at the rate fixed by law.

The plaintiff appeals against this decision, and urges that, as the vakeel acknowledged, by his receipt endorsed on the vakalutnamah, that he had received his fees at the full rate fixed by law, it was incumbent on the other party to prove the contrary; and that as the vakeel had died before he rendered those professional services

for which he received remuneration, he (plaintiff) was justly entitled to recover the amount from his representatives.

This is an action for money had and received as remuneration for professional services by a party deceased, who died while acting as appellant's vakeel in a case then pending. It is not urged that the deceased committed any negligence or default, while he so acted, and it is presumable that death alone prevented him from performing the services he was engaged for. I am therefore of opinion that this action cannot be maintained against the heirs and representatives of his personal estate, as the deceased was prevented from rendering the professional services engaged by plaintiff solely by the act of God, for which no man can be made responsible. The law did not compel plaintiff to incur the risk of pre-payment in this matter; on the contrary, Clause 5, Section 2, Regulation XII. 1833, clearly contemplates the payment of any remuneration agreed upon to be made after decision of the suit, and gives the parties the option of depositing the amount in court for the satisfaction of their pleaders. If then plaintiff chose to pay this money in advance, he must be supposed to have contemplated the common risks of such a proceeding, and as the personal services of deceased were alone stipulated for, he cannot reasonably charge him with having evaded the engagement he entered into, because he was deprived of the power to fulfil it by the inevitable act of God. I therefore dismiss this appeal.

THE 12TH APRIL 1850.

Case No. 44 of 1849.

Appeal from a decision of Roy Huru Chunder Ghose, Principal Sudder Ameen, passed on the 12th July 1849.

Kasseenath Ghose, Sumbhoo Chunder Ghose, Gudadhur Ghose, and Muddoosooden Ghose, (Defendants,) Appellants,

versus

Joynarain Bose, (Plaintiff,) Respondent.

THE plaintiff stated that the appellants hold 64 *beegahs*, 9 *cottahs*, 1 *pao* of land of various qualities in his zemindaree, and that, as auction purchaser, he had the land measured and issued notices upon them under Sections 9 and 10, Regulation V. 1812, assessing the lands at a jumma of 317 rupees, 7 annas, 16 gundahs, but they have failed to enter into engagements or to pay the rent. Plaintiff therefore instituted this suit to assess the lands at the abovementioned rent, and to recover rent at this rate for the years 1251, 1252, up to Pous of 1253, with interest: suit was accordingly valued at 1,330-5-5.

Appellants objected to plaintiff's right to sue, on the plea that the zemindaree was purchased "benamee" by the old proprietor; then, that the quantity of land was exaggerated; and finally, that they held a pottah for 25 beegahs 11 cottahs, dated 24th of Falgoun 1194 B. S., granted by Mr. Collector Pye, at a jumma of 40 rupees, 6 annas, 18 gundahs Sicca, and that the rent of the land occupied by them, was included in the jumma bundee of 1190 B. S., and purchased by them subsequently, and was not now liable to any enhancement.

The principal sudder ameen states, in his decision, that the plaintiff proved his title as auction purchaser of the estate, and that he had issued the notices required by Section 10, Regulation V. 1812, but deemed him only entitled to assess enhanced rent on 14 beegahs, 12 cottahs, 13 chattacks. With regard to the rent of the land included in plaintiff's plaint, the principal sudder ameen deemed the 25 beegahs 11 cottahs exempt from enhancement under the pottah filed by appellants under Section 27, Act XII. 1841, and the remainder to have been proved by claimants to be in their possession, and not the property of the appellants.

The defendants appeal against that part of the principal sudder ameen's decision, which renders them liable for enhanced rent on 14-12-13. They urge that of this land 6 beegahs, 5 cottahs, 1 pao, is a false measurement; that 1 beegah 6 cottahs is rent-free land; 2 beegahs 11 cottahs and 3 beegahs 8 cottahs land, purchased by them from other parties and not liable to be enhanced: but appellants failed altogether to show that they had any grounds for their assertions. They had never moved the lower court regarding the alleged false measurement, though called upon to bring forward any objection against the ameen's proceedings within a certain time. I therefore see no reason to interfere with the decision of the principal sudder ameen, declaring 14-12-13 of land in possession of the appellants liable to enhancement, and confirm the order. Appellants to pay their own expenses and respondent's in this appeal.

THE 19TH APRIL 1850.

No. 2 of 1847.

Original Suit.

Suttobhama Dossee, and after her death Ramgopaul Bose, representative and guardian of Preeonath and Opindronath Bose, minors and grandchildren of Suttobhama Dossee, (Plaintiff),

versus

Rajkisto Nag Chowdree, Raja Damooder Chunder Dey, and Ranee Hursoonderee and others, (Defendants.)

THIS suit was instituted under the following circumstances.

Rajkisto Nag Chowdree, one of the defendants, had instituted a suit against the family of Bejoy Chunder Dey, for 9 annas, 13 gundahs, 1 cowree, 1 krant share of their talook Bhowanipore, on the

grounds that 8 annas had been mortgaged and 1 anna, 13 gundahs, 1 cowree, 1 krant sold to his mother Chundermooke Dossee, under deeds drawn up in the name of Doorgapersaud Nag, his cousin, and Suttobhama Dossee, Doorgapersaud's wife. He made Suttobhama, then the widow of Doorgapersaud, a defendant in his action, and procured a reply to be filed in confirmation of his statement and acknowledging his right, under which state of affairs he got a decree for the shares claimed by him in the principal sudder ameen's court. The case was however appealed to the Sudder Court by Raja Damoodar Chunder, who denied the sale of the 1 anna, 13 gundahs, 1 cowree, 1 krant of the talook; and while this appeal was pending, Suttobhama Dossee, the present plaintiff, petitioned the court "objecting *in toto* to the decision. She declared the 8 annas were acquired by her husband Doorgapersaud with his own means, and the 1 anna, 13 gundahs, 1 cowree, 1 krant, in her name, also purchased by him; that the plaintiff had acted for her in the Supreme Court in a case regarding the 8 annas, and had fraudulently filed an answer in this case, as from her, admitting his claim, and that she had been kept in ignorance of the suit while pending in the zillah, being a recluse woman living in the same premises as plaintiff." On the 23rd April 1846, this suit was returned by the Sudder Court to enquire into the allegations of fraud advanced by the present plaintiff against Rajkisto Nag; and on the case coming to a hearing, Rajkisto Nag, being unable to satisfy the court that he had been authorised by Suttobhama to file her reply admitting his claim, his suit was dismissed on the 24th December 1849.

In the mean time, that is to say, on the 8th September 1845, Suttobhama commenced the present action for 9 annas, 13 gundahs, 1 cowree, 1 krant share of the sale proceeds of talook Bhowanipore, in the hands of the collector of Nuddea, by whom the estate had been sold for arrears of Government revenue, making the representative of Raja Bejoy Chunder Dey and Rajkisto Nag defendants, and also Ranees Hursoonderee, who had claimed five villages, but who was subsequently released from this action.

The plaintiff states that two four anna shares of talook Bhowanipore were mortgaged to her husband, Doorgapersaud Nag, and subsequent to the mortgage, 1 anna, 13 gundahs, 1 cowree, 1 krant sold to him by Bejoy Chunder Dey and others in her name; that the mortgages were legally and formally foreclosed in the Supreme Court, and a serjeant deputed from the sheriff's office to give her representative possession of the mortgaged shares, and that such possession was given, but disputes took place almost immediately between herself and a party calling himself a farmer of the estate, which brought the matter before the foudjdar court of Baraset, by which authority she was restrained from making collections for fear of causing a breach of the peace; and, before she could take any effectual measures to establish her rights, the estate was put up and

sold for arrears of revenue. She now therefore claims to receive a share of the proceeds of sale equivalent to the share she held in the estate, namely, 9 annas, 13 gundahs, 1 cowree, 1 krant, represented by the sum of 80,052-1-6-2 rupees, now under attachment, to meet this claim.

Bejoy Chunder Dey's representatives filed no reply to the plaint, but, on the 14th March of the present year, gave in a petition stating that they had filed their reply to the claim of Rajkisto Nag, and, under the impression that this case and that would be taken up and decided together, they had filed no separate reply to the present action; but as that case had been already disposed of, they now prayed that their reply in that cause might be referred to as including their defence to the present action. It is only necessary to add that the mortgages of the 8 annas are admitted and in no way disputed, but the sale of the 1 anna, 13 gundahs, 1 cowree, 1 krant is denied altogether.

Rajkisto Nag only opposed plaintiff's claim on the grounds of his own right of action.

Plaintiff was unable to establish the sale or purchase of the 1 anna, 13 gundahs, 1 cowree, 1 krant of the talook, or of having ever held possession of such a share in the talook, or that either her own or her husband's name had been registered or revenue paid by either of them. I therefore reject any claim to proceeds of sale founded on this plea.

The mortgages of the 8 annas share and the subsequent foreclosure under decree of the Supreme Court, are fully and clearly established, and those facts are not denied by the defendants interested as representatives of the original mortgagers. The only question requiring investigation was, whether plaintiff had been inducted to possession and thereby acquired such a *legal* right and title as enabled her to claim successfully an 8 annas share of the sale proceeds as one of the proprietors. In order to ascertain how the order of the Supreme Court to place plaintiff in possession had been carried out, the serjeant or bailiff employed for that purpose by the sheriff was brought forward, and examined in this court, and from his evidence and that of a sircar of the sheriff's office, who accompanied him, I considered it very satisfactorily established that possession of the 8 annas had been given through plaintiff's representative, Raja Pershaud Nag, brother of Doorga Persaud, according to the form and custom of such proceedings, that is to say, these parties went from village to village erecting bamboos, assembling the ryots, taking from them kubooleuts, and in some instances receiving rent, and thus delivering to plaintiff's representative possession of her rights. As it appears to me that these acts were symbolical of the intention of the party deputed by the court to carry out its orders, and were deemed to be a full and complete performance of those orders, as evidenced by the serjeant having so reported to the

sheriff's office, I consider it must be sufficient to establish for plaintiff a *legal* title to receive her share of the sale proceeds as an eight annas proprietor of the talook Bhowanipore when sold for arrears of Government revenue, I therefore decree to plaintiff such share. But as the representatives of Damooder Chunder have not opposed her rights in this action, I consider she must pay her own costs. The case is therefore decreed accordingly. The costs of Ranee Hursoonderee to fall on plaintiff as well as her own, and the other defendants to pay their own costs.

THE 19TH APRIL 1850.

Case No. 48 of 1849.

Appeal from a decision of Roy Huru Chunder Ghose Bahadoor, Principal Sudder Ameen, passed on the 12th July 1849.

Joynarain Bose, (Plaintiff,) Appellant,

versus

Kasseenath Ghose, Sumbhoo Chunder Ghose, and others, (Defendants,) Respondents.

THIS appeal was made from the decision of the principal sudder ameen, alluded to in No. 44 case, tried on the 12th of April, when this case was likewise brought forward.

The appellant is dissatisfied with that part of the decision of the principal sudder ameen, releasing 25 beegahs 11 cottahs of land alleged by respondents to be held by them under a pottah of 1194 B. S., granted by the then collector of the 24-Pergunnahs, on which appellant was desirous of enhancing the rents, and other lands found in the possession of the intervening parties in this suit.

The principal sudder ameen observes, in his decision, that the defendants (respondents) urge that their ancestor had long before the perpetual settlement, and ever since that time, held and occupied the lands specified in their pottah as a cultivating resident ryot; that plaintiff (appellant) has only met this by objections, but failed to refute it by evidence or proof; that defendants' pottah purports to be according to the jumma bundee of 1190 B. S., (1783,) and that their "dakhillas" support their statement; that they have all along occupied and paid at the rates of that pottah for a period of 59 years; that although the pottah is not designated as "mokurruree," yet it bears the seal and signature of Mr. Collector Pye, and plaintiff does not attempt to impugn its authenticity, it must therefore be regarded as genuine, and the rights of the defendants upheld as khoodkasht ryots under Section 27, Act XII. 1841 A. D.

The auction purchaser (plaintiff) appeals against this decision. He urges that the pottah filed is fabricated, and that no such engagements were given to any of the ryots. In proof of his assertions, he calls attention to the discrepancy between the English and

Bengalee dates of the pottah, and the copies of correspondence filed by him to prove that the revenue authorities in 1786 and 1787 were directed to furnish the ryots with transcripts of the jumma bundee of 1190 B. S., to prevent disputes between the ryots and the gomastahs, and that the talooks were then let in yearly farm. He also points to a precedent of the Sudder Dewanny Adawlut, published at page 102, volume V. of the printed Reports, to show that the rates of this jumma bundee were considered as affording no proof of the ryot's right to retain these rates at the present day.

This is an action brought by an auction purchaser to enhance the rent of the respondent's lands, who are joint tenants, and claim to hold under an engagement by pottah dated in 1194 B. S., (1788). The principal sudder ameen, who tried the case, decreed in favor of the ryots, on the ground that the pottah, though objected to, was not proved to be spurious, and that such engagement, having existed, was binding on the auction purchaser, the party holding it being a "khoddkasht" ryot coming under the class of exemptions in Section 27, Act XII. 1841. In the first place, I differ from the principal sudder ameen regarding this document. First, because its appearance is most suspicious. The signature of the collector does not look natural, the letters seem to me to have been written in a constrained and artificial hand, and the English date is 19 days *previous* to the date of the pottah recorded in Bengalee style, that is to say, the memorandum in English above the collector's signature is the 14th of February 1788, while the pottah purports to have been drawn up on the 24th of Falgoon 1194 B. S., corresponding with the 4th of March 1788. Such a discrepancy seems to warrant a suspicion that the pottah was written by some one unacquainted with the English dates. Second, the appellant has filed in the lower court copies of a correspondence in the Revenue Department of 1786-87 A. D. These letters were previous to the pottah, yet they provide merely for the expenditure of a certain sum to furnish the ryots of the 24-Pergunnahs with transcripts of the jumma bundee of 1190 B. S., to prevent disputes between them and the gomastahs. Had the delivery of pottahs been contemplated, this expense would not have been sanctioned, and the possession of pottahs in their talooks would have formed the rule, instead of the exception. The terms of the pottah are also inconsistent with the statement of its delivery according to the respondents' own account. They aver that their ancestor Bejoyram Ghose procured the pottah as *junglebooree*, whereas he is recorded in the jumma bundee of 1190, as holding *chakeran*, *resumed homestead* and *arable* lands, and this pottah, dated four years subsequently, is to the same effect: how then is it possible that lands of this description could have been given on *junglebooree* tenure? It certainly could never have been granted on such conditions, and has in all probability been fabricated to back up the record afforded by the jumma bundee papers. I have

therefore no hesitation in rejecting the pottah as spurious ; and the only point left for consideration is, whether the claim of respondents to exemption from enhanced rents is supported by the fact of their ancestor having occupied the same lands in 1190 B. S. (1783) as a resident cultivating ryot. It seems to me evident from the fact of their ancestor's lands having been included in the general survey and measurement of that time, and his then possessing no fixed engagement or lease that his lands were then assessable in common with the other lands of the village, and the precedent pointed out by the appellant, in the 5th volume of the Sudder Dewanny Reports, rules that the fact of a ryot of the 24-Pergunnahs having paid all along at those rates, does not affect the rights of the zemindar to enhance, if it shall be shown that the rates of the neighbourhood have increased between that date and the present time. This fact is abundantly shown by the data afforded by appellant before the lower court, and which rates have been adopted in regard to lands in the same mehal declared liable to enhancement. I therefore, on the principle of the precedent alluded to above, come to the conclusion that the respondents' ancestor was assessed in 1190 B. S., at the rates then current in the mehal or pergunnah, and that respondents' rents are now equally liable to enhancement under the sale law. I therefore reverse the decision of the principal sudder ameen regarding the lands specified in the pottah, and declare the appellant entitled to enhance at the rates specified in the lower court's decree for land of the same description, with arrears and interest, but I confirm the decision regarding the protection afforded by the lower court's decree to the lands occupied by the intervening parties in this suit.

THE 22ND APRIL 1850.

Case No. 19 of 1850.

Appeal from a decision of Mr. Wright, Sudder Moonsiff, passed on the 7th January 1850.

• Jogoo, (Plaintiff,) Appellant,

versus

Jurreeb and another, (Defendants,) Respondents.

THIS suit was instituted to recover the amount of a bond, principal and interest, amounting to 55-15-13-2, dated the 2nd of Jyete 1251, repayable in the following Chyete.

The defendants denied the debt.

The moonsiff observes that the plaintiff, out of four witnesses, whose names are recorded on the bond as attesting witnesses, brought up only two ; one gave evidence in support of plaintiff's claim, the other pleaded entire ignorance of the matter. The plaintiff then produced another person, stated to be the writer of the bond, but his name was not affixed to it; and the moonsiff considered the fact of his

having really written the document and witnessed the transaction, could not be relied upon on the evidence of the abovementioned witnesses only. The moonsiff therefore dismissed the claim of plaintiff.

Plaintiff has appealed against this order, but, for the reasons stated by the moonsiff in his decision, I see no cause for interfering with that order, and therefore dismiss this appeal without summoning the respondent.

THE 22ND APRIL 1850.

Case No. 45 of 1849.

Appeal from a decision of Roy Huru Chunder Ghose Bahadoor, Principal Sudder Ameen, passed on the 10th July 1849.

Ram Chand Dutt and Kally Churn Dutt, (Defendants,) Appellants,

versus

Ram Chand Bose, (Plaintiff,) Respondent.

THE particulars of this case are given at pages 74, 75, and 76 of the printed Decisions of this court, for the month of July 1846. From the decision then given a special appeal was preferred to the Sudder Court, which authority, on the 9th of March 1848, ruled as follows :

“ In this case the plaintiff sued the petitioner to recover possession of 55 beegahs 6 cottahs of lakhiraj land. He stated the land had descended to his father, Dabeepershaud and Gokool Chunder. That Gokool Chunder died without having a son, in consequence of which the entire 55 beegahs 6 cottahs became the property of Dabeepershaud, plaintiff's father, from whom he inherited the property. One of the pleas of the defendants was that the plaintiff was only proprietor of a moiety of the lands, Gokool Chunder having left a widow and a grandson by his daughter. On this Trippoorahsoonduree, the widow of Gokool Chunder, filed a petition, to the effect that she had no objection to the suit being instituted and carried on by the plaintiff. Here the matter dropt; and neither the principal sudder ameen, nor the judge, in appeal, though the plea was again urged, took the slightest notice of the point, and eventually decreed for the plaintiff.”

The Court “ consider it essential that a plaintiff must show a legal title to the property he comes into Court to claim. Here it was disputed and no notice was taken of the plea.” The Court “ therefore deem the proceedings of the lower courts to be incomplete, and, quashing both decisions, remand the case to the principal sudder ameen in order that the point above noticed may receive due consideration.”

The principal sudder ameen then nonsuited the plaintiff for not making Trippoorahsoonduree and others, heirs of Gokool Chunder, defendants, and that order was upheld by the judge of the 24-Pergunnahs in January 1849, but reversed in special appeal; the Sudder

Court remarking that the lower courts misunderstood the reason for returning the case, which was, that Trippoorahsoonduree's petition and the objections made by the defendants should be considered together, and the lower court's opinion recorded thereon.

On the case being again remanded, the principal sudder ameen has decreed to plaintiff possession of all the land, remarking that although Trippoorahsoonduree and Judoonath are the heirs of Gokool Chunder, yet, as they have signified their consent to plaintiff's instituting and carrying on the suit, the court is not required to adjudicate on their rights, or to take up the objections of the defendants.

The defendants have appealed against this decision, and, besides denying plaintiff's right to possession, on the grounds stated by him, allege that he in the first instance concealed the fact of Gokool Chunder having left any heirs and set up his claim to the whole of the property as sole heir to it; that now that his rights of claim are clearly shown to extend to only a moiety, he cannot, under any circumstances of consent on the part of the other heirs, be permitted to prosecute his suit for their rights and his own. It appears to me that plaintiff should be nonsuited. The very essence of the court's direction in returning this suit for review of judgment is the principle "that a plaintiff must show a legal title to the property he comes into court to claim." In this suit, plaintiff has clearly only rights as heir to his father who was not his brother Gokool's heir, nor does it appear that he actually succeeded him. The fact of Trippoorahsoonduree and Judoonath waiving their rights, to permit plaintiff to institute this suit, does not vest them in plaintiff, and it is, moreover, quite obvious that plaintiff intended to conceal the fact of Gokool having left heirs in order to carry on this suit for his own benefit. I therefore consider the objections of the appellants are valid, and nonsuit the plaintiff.

THE 23RD APRIL 1850.

. Case No. 46 of 1849.

Appeal from a decision of Roy Huru Chunder Ghose Bahadoor, Principal Sudder Ameen, passed on the 14th July 1849.

Matongenee Debea, widow of Mohes Chunder Banerjea, and another,
(Defendants,) Appellants,

versus

Joynarain Bose, (Plaintiff,) Respondent.

SUIT to assess enhanced rent, amounting to 373-1-6, on 64 *beegahs*, 11 *cottahs*, 2 *chattacks* of land, and to recover arrears at assessed rates from 1251 to Pous 1253 B. S., value of suit 1,547 rupees, 3 annas, 12 gundahs, 2 cowrees.

The plaintiff states that, as auction purchaser of talook Longy, &c., he measured the whole talook, and finding the above quantity of

land in the holding of defendants of various quantities in five different villages, issued notice upon them under Section 10, Regulation V. 1812; but as defendants had failed to enter into engagements he brought this action against them.

Defendants urge that the talook has been purchased benamee by the old proprietor, that the measurement was unfairly conducted and notice not served, that their tenure consists of 80 beegahs, 16 cottahs, $1\frac{1}{2}$ pao, is estemraree, and has been held at a fixed rent long before the permanent settlement, and is not now liable to enhancement.

The principal sudder ameen observes, in his decision, that the question of the property having been purchased "benamee" by the old proprietor has been decided in other cases and the purchase upheld as *bonâ fide*, and also the dispute about the measurement rod settled in favor of the auction purchaser. The service of the notice in this case has also been proved by evidence. That the objection of the defendants to hold at a fixed rent is inadmissible, as they have no pottah or other title to uphold it, and that plaintiff as auction purchaser has full power to assess. That the local enquiry of the ameen shows defendants to be in possession of 61 beegahs, 5 cottahs, 7 chattacks; and though they allege that 23 beegahs $6\frac{1}{2}$ cottahs of this land is held by one Madhub Chunder Banerjea, yet this person only came forward to urge this claim before the ameen, and never preferred it at all in the lower court. That six witnesses residing near the spot deposed that the land is occupied by defendants, and that the witnesses deposing to the contrary showed an intention throughout their evidence to favor defendants, by misstating the rates of the lands in their occupation. The principal sudder ameen then decreed to plaintiff rent on the different descriptions of land held by defendants, at the rates recorded by the ameen in the local enquiry, with arrears and interest, and costs of suit.

The defendants have appealed, but urge nothing new in their appeal, and I see no reason for interfering with the decision of the lower court. It is accordingly confirmed, and this appeal dismissed.

THE 23RD APRIL 1850.

Case No. 47 of 1849.

Appeal from a decision of Roy Huru Chunder Ghose Bahadoor, Principal Sudder Ameen, passed on the 21st July 1849.

Madhub Ram Mookerjea and Ram Gopaul Mookerjea, (Defendants),
Appellants,

versus

Joynarain Bose, (Plaintiff,) Respondent.

To assess 23 beegahs, 3 cottahs, 2 pao of land, according to rates specified in a notice issued under Section 10, Regulation V. 1812,

and for recovery of arrears at the same rates from 1251 to Falgoun 1254 B. S. Suit valued at 634-8-12-2.

Plaintiff calls himself auction purchaser of talook Longy, &c., and alleges service of notice on the defendants his ryots, who have refused to enter into engagements for the lands they hold together.

Defendants in the lower court denied service of notice, declare the lands are exempt from enhancement, being included in the jumma-bundee of 1190 B. S., (1783,) and that the talook has been purchased benamee by the old proprietor. Ram Gopaul pleaded having nothing to do with the lands. Madhub states his tenure consists of only 14 *beegahs*, 8 *cottahs*, 13 *chattacks*, 6½ *gundahs*, at a fixed jumma of rupees 16-4-16-3-4, part of which he purchased, and part is included in pottah from the former zemindar; lastly, he pleads against the fairness of the measurement.

The principal sudder ameen overruled all these objections. He observes that the service of the notice is satisfactorily proved; that the *bonâ fide* purchase of the plaintiff of the talook had already been decided in another case; that the local enquiry proved the common tenancy of the defendants, and the lands to comprise 23 *beegahs*, 18 *cottahs*, 1 pao; that a claim set up by defendant Madhub before the ameen, to the effect that some of the land was debut-tur, had nothing whatever to support it; and that certain parties stated by the witnesses to be occupants of some of the land had not come forward or preferred their claim in any way. The principal sudder ameen then details the particulars of the lands in possession of the defendants, and the local rates assessable on them according to the proof adduced before him, and decrees the lands to comprise 23 *beegahs*, 18 *cottahs*, 1 pao, different descriptions, and the rent yearly to amount to 100-3-19½, at which rate he assesses the arrears from 1251 to Falgoun of 1254 B. S., and decrees the amount, with costs, in favor of plaintiff.

Against this decree the defendants appealed, but only Madhub appeared through his vakeel. He urges a right to hold the land he occupies at the rates recorded in 1190 B. S.; but this is only supported by the deeds of sale and a pottah of the former zemindar, all dated since the permanent settlement, and giving no title to hold at an invariable rate. The other exceptions taken by him to the lower court's order are the same as he pleaded in defence; but the reasons given by the principal sudder ameen dispose of those objections, and I see no reason to disturb his decision on any point.

The order of the lower court is therefore confirmed, and this appeal dismissed.

THE 24TH APRIL 1850.

Case No. 49 of 1849.

Appeal from a decision of Syed Osman Ally, Additional Principal Sudder Ameen, passed on the 27th of July 1849.

Madhub Chunder Surnokur, Ouster, and Sumbhoonath Roy,
Talookdar, (Defendants,) Appellants,

versus

Sumbhoo Chunder Mitter and Denonath Mitter, (Plaintiffs,) Respondents.

SUIT for possession of a tank and piece of ground said to comprise 14½ cottahs, together with mesne profits, value of suit estimated at rupees 113, annas 15, gundahs 4.

The plaintiffs state that they hold 7 beegahs ancestral rent-free land in the village of Jugoola; that of this 6 cottahs had been leased to the defendant Madhub Chunder at a rent of 1 rupee 4 annas for 15 years; that Madhub Chunder, after taking possession, and paying rent for some time, colluded with the other defendant Sumbhoonath Roy, and, under pretence of its being the *mal* land of the latter, dispossessed plaintiff, and, under color of an Act IV. 1840 decree, keeps possession of the land now in dispute.

Madhub Chunder replies that he holds the land from the talookdar; and Sumbhoonath Roy alleges that it appertains to his talook.

The additional principal sudder ameen determines the issue to be tried to be, whether the land in dispute can be held as lakhiraj or not, and refers the point under Section 30, Regulation II. 1819, to the collector, who quotes in his proceeding the report of the mohafez of his office, declaring the land to be part of a valid lakhiraj tenure, and on this report the additional principal sudder ameen decides the case in favor of the plaintiff.

The defendant appeals, urging that the land is *mal*.

JUDGMENT.

It appears to me that a wrong issue has been declared and tried in this case.

The plaintiffs state that they hold 7 beegahs of rent-free land in the village of Jugoola, being part of the land granted under a certain sunnud, No. 8334, to their ancestor; that a portion of this land was leased by them to Madhub Chunder, who, in collusion with the talookdar, has dispossessed them of their rights by alleging the land in dispute to be *mal*. The obvious point to be investigated in this case is whether the land in dispute appertains to plaintiffs' lakhiraj tenure, or to Sumbhoonath Roy's *talook*; but in ascertaining this point there was no necessity whatever for enquiring into the *validity* of plaintiff's rent-free tenure, and consequently no necessity for referring to the collector for report under Section 30, Regulation II. 1819. I therefore reverse the order of the additional principal sudder

ameen, and direct this case to be sent to the moonsiff of Nyehattee, within whose jurisdiction the land is situated, as the claim is less than 300 rupees. The moonsiff will declare the proper issue to be whether the land in dispute is part of plaintiffs' lakhiraj land or of the defendant talookdar's talook, and decide the suit like any other case of disputed right of possession. The stamp fees to be returned to appellant.

THE 24TH APRIL 1850.

Case No. 75 of 1850.

Appeal from a decision of Mr. Thompson, Moonsiff of Sulkeah, passed on the 26th of January 1850.

Kisto Bajal, (Plaintiff,) Appellant,

versus

Pauchee Dossee and others, (Defendants,) Respondents.

KISTO BAJAL stated that his brother held a jote of 4 beegahs and died in 1253 B. S. He was succeeded by his widow and plaintiff, who, on the 2nd of Bysack 1254 B. S., leased part of the lands to defendants for 3 years at a yearly rent of rupees 12, taking a deposit of 20 rupees as security for the proper management of the property; that defendants paid their rent to plaintiff and his brother's widow jointly up to Bysack 1250 B. S., but the rent from Joiste to Srabun remains unpaid; and as plaintiff's brother's wife, Brumomoye, had left her family and become a prostitute, plaintiff alone sued for the arrears due to them.

The defendants admitted the lease, but alleged payment to Brumomoye in full, and that plaintiff had no right to demand rent from them; they having neither given a kubooleut in the joint name of plaintiff and Brumomoye, or paid their rent joint, or in any way acknowledged his joint interest in the property. They affirm that plaintiff has brought this suit as an indirect means of getting possession of the property and the 20 rupees they have lodged as security.

Other parties intervened, stating that the lands have been recently resumed by Government and new settlements made, and that the lands held by plaintiff's brother as jotedar have been leased to others, and amulnamahs granted, no person having come forward after plaintiff's brother's death to engage as his heir for the jote.

The moonsiff dismissed plaintiff's claim observing that the witnesses he brought forward to establish his plea of joint occupancy with Brumomoye were "koorpha" ryots of the jote, and had interest of their own to serve in giving such evidence; and that plaintiff must first prove the collateral issue of Brumomoye's forfeiture of her rights before he can come forward, and claim to represent her deceased husband.

The plaintiff appeals against this decision, urging his having proved in the lower courts that the tenancy of himself and Brumomoye was in common, and that her lapse from virtue deprived her of the rights she succeeded to on the death of her husband.

This is a suit for arrears of rent which the plaintiff claims under a kubooleut given by the defendants to himself and Brumomoye, his brother's widow.

The kubooleut does not mention plaintiff's name at all, and therefore fails altogether to establish his claim. His allegations regarding his brother's widow are not sufficient, standing alone, to support his claim.

I therefore see no reason to interfere with the moonsiff's decision, and dismiss this appeal.

THE 25TH APRIL 1850.

Case No. 19 of 1850.

Appeal from a decision of Mr. Wright, Sudder Moonsiff, passed on the 11th December 1849.

Ramdhone Sein, (Plaintiff,) Appellant,

versus

Fuzlull Kurreem, Madhub Mundul, and others, (Defendants,) Respondents.

THE plaintiff states that he purchased a jote granted to one Madhub Mundul in perpetuity by the zemindar, and proceeded to make engagements and settled new ryots on the lands, the old ones failing to enter into engagements with him, when the zemindar and six others turned out his tenants and dispossessed him. The date of his kuballa of purchase is the 26th Bysack 1253, (6th May 1846.) The zemindar alleges that Madhub Mundul had abandoned his jote at the end of 1247 B. S., being at the time in arrears, and he therefore let the lands to others made defendants in this case.

Madhub Mundul admitted the sale of the jote, and otherwise supported the claim of plaintiff.

The other defendants supported the allegation of the zemindar, Fuzlull Kurreem.

The moonsiff observes that the witnesses brought forward by the plaintiff are not trustworthy, and their evidence cannot be relied upon, and that the witnesses for the defence depose to the fact of Madhub Mundul having abandoned his land in 1247, and there is nothing to substantiate the assertion that he held possession after that time, and therefore dismisses the suit.

It is urged by appellant (the plaintiff) that he asserted in the lower court that a party named Harumohun Mistree had sued under Act IV. 1840, in the year 1252 B. S., in the name of Madhub Mundul, for possession of 3 beegahs some cottahs of this jote land,

and that the circumstance is alluded to in the kuballa, as indicating the land for possession of which Harumohun's claim was rejected, and that plaintiff filed in the lower court a fysalah of the former moonsiff, in a civil suit brought by Harumohun to reverse the decision under Act IV. 1840. This, plaintiff urges, is sufficient to support the assertion that Madhub was in possession after 1247 B. S. As I observe that this matter, though brought forward, as stated by plaintiff, has not been considered by the lower court though supporting the fact of Madhub's possession up to 1252 B. S., I return this case for re-trial. The moonsiff will give due consideration to this point, if it escaped his observation, or explain, in his decision, why he deems it immaterial to the support of plaintiff's claim. The stamp fees to be returned.

THE 29TH APRIL 1850.

Case No. 44 of 1850.

Appeal from a decision of Beneenath Bose, Moonsiff of Maniktulla, passed on the 14th of December 1849.

Ram Chand Ghose, (Plaintiff,) Appellant,

versus

Pearee Bewah, (Defendant,) Respondent.

THIS suit was instituted by the plaintiff on the 4th of July 1849, to recover from the defendant 104 rupees, 13 annas, 4 gundahs, 2 cowrees, 2 krants, principal and interest on a bond for 100 rupees, dated the 26th of Maugh 1256 B. S., payable with interest in the month of Bysack following.

Defendant denied the debt *in toto*, and alleged that the plaintiff was not in such affluent circumstances that he could lend the money he sued for, and that the suit had been got up by one Kissub Chunder Bose, her enemy.

The moonsiff dismissed the claim, deeming plaintiff's witnesses unworthy of credit. His reasons for this opinion are their low position in life, and their ignorance of plaintiff's affairs in general, though stated to be familiar with them. He, moreover observes, that plaintiff is not the wealthy person he represents himself to be, but lives by his trade (the sale of copra,) and has not apparently the means of lending money.

The plaintiff appeals against this decision, urging the respectability of his witnesses, and that the impressions of the moonsiff regarding them are erroneous.

I observe that the plaintiff's case is solely supported by the evidence of his witnesses. The depositions of these persons appear to have been conducted by the moonsiff himself, and he has stated in his decision that they are not persons whose unsupported evidence can be relied upon. This court has only the record of these depositions to refer

to, and cannot wisely set up its opinion against the impressions of the moonsiff, who has examined the parties. The moonsiff of Maniktullah is, moreover, a discreet and careful officer, and I doubt not has given a conscientious opinion on the merits of the case. I therefore see no grounds for interfering with the decision of the lower court, and confirm it.

THE 29TH APRIL 1850.

Case No. 48 of 1850.

Appeal from a decision of Mr. Wright, Sudder Moonsiff, passed on the 7th January 1850.

Gunganarain Katall, (Defendant,) Appellant,

versus

Parbuttee Churn Paul and others, (Plaintiffs,) Respondents.

THE plaintiffs state that they purchased 1 beegah 1 cottah of lakhiraj land from Bissonath and Kiddernath (made defendants in the suit) on the 21st of Chyete 1255 B. S., and were ousted by Gunganarain and Killaram in Jeyth 1256 B. S. Plaintiffs therefore sue for recovery of the same.

Gunganarain alleges a previous purchase of the land as far back as the 12th Kartick 1248, (27th October 1841,) from Bissonath and others, and possession from that time. Killaram avers that he holds a mokurruree under-tenure of the land in dispute. The other defendants support the claim of plaintiffs admitting having sold the land to them.

The moonsiff decides as follows: "I am of opinion that both the purchases have been established, and as there is nothing in the evidence to show that plaintiff was aware of the prior sale to Gunganarain when he had his deed of sale registered, such registry must be held to invalidate the deed of sale to Gunganarain, which has not been registered." On this view of the law, the moonsiff decrees the plaintiff possession of the land.

It appears to me that this is a misconception of the law of registration, which is not applicable to the circumstances of this case.

The appellant Gunganarain alleges that he purchased the land in dispute from the same parties who have since sold it to plaintiffs, seven years before the date of plaintiffs' deed of sale, and that moreover possession was delivered to him at the time of purchase. The purchase of appellant is said by the moonsiff to be as authentic as the subsequent purchase of plaintiff, but the latter deed of sale being registered invalidates the previous deed of sale of appellant which is unregistered. Appellant's deed of sale however is dated the 27th October 1841, that is, previous to the promulgation of Act XIX. 1843, which Act specially provides "that nothing in this Section (2) shall be construed to extend to any deed, or certificate, made before

the said 1st day of May last past." It is not therefore affected by the law.

I therefore return this case to the moonsiff, who has decreed it upon the understanding that the latter deed of sale invalidates the previous one because unregistered, that he may take into consideration the pleas urged by the defendant regarding the purchase and possession of the property, and decide the case on its merits. Stamp fees of appellant to be returned.

THE 29TH APRIL 1850.

Case No. 49 of 1850.

Appeal from a decision of Mr. Wright, Sudder Moonsiff, passed on the 7th January 1849.

Bissonath Banerjea and Kedernath Banerjea, (Defendants,) Appellants,

versus

Parbuttee Churn and others, (Plaintiffs,) Respondents.

THE parties appealing were made defendants in case No. 48, of this date, and have preferred this appeal from the moonsiff's d because in it he has recorded that the defendants, Gunganar Killaram, are at liberty to sue appellants for damages, if so advised for having caused them so much litigation by giving them an invalid title. As the original case has been sent back for re-trial, as recorded in case No. 48, decided this day, there is no necessity for this court to adjudicate on the plea set forth by appellants as to their having denied the sale of the property to Gunganarain. This point will, of course, be again considered by the moonsiff in deciding the original suit. The appellants will therefore receive back their stamp fees, and the case be remanded.

THE 30TH APRIL 1850.

Case No. 52 of 1850.

Appeal from a decision of Hurrish Chunder Mitter, Moonsiff of Lubshaw, passed on the 11th January 1850.

Kistomohun Paroye, (Defendant,) Appellant,

versus

Rajchunder Paroye and others, (Plaintiffs,) Respondents.

SUIT to reverse a summary decree of the Baraset revenue court under Regulation VII. 1799.

The plaintiffs set forth that they are tenants of the zemindarree pergunnah Bajeedpore, and exercise the privilege of fishing in certain localities when overflowed by the rivers. That the defendant, Kistomohun, had set up a right to the fishery in a branch of the

river Roymungul, (which had taken its course in turn off Bengal-
pore, Hingulunge,) under an alleged grant from the natives,
made defendants in this case,) and under a pretended kuboolant,
said to have been executed by plaintiffs, brought a summary suit
against them for arrears of 1254 B. S. and procured a decree in
favor in the B. S. deputy collector's court on the 30th December
1846. To set aside this award the present action is instituted.

The defendant Kistomohun replied that the river Roymungul,
having changed its course, and flowed through the estates of Kistomohun,
Suroop Paroye, and others, he had taken a lease of the
same in 1246 B. S., and at plaintiffs' request had undertaken the fishery
to them at a jumma of 46 rupees. In the year 1254 they only paid
5 rupees, he therefore sued them summarily for the balance and
obtained an award in his favor.

The zemindars filed a reply in support of Kistomohun's defence.

The moonsiff observes that the kuboolant filed by Kistomohun in
support of his claim in the revenue court is not on stamp paper, as
required by the law under Section 31, Schedule A., Regulation
X. 1829, the yearly rent being in excess of 12 rupees. On this
ground the moonsiff reversed the summary decision, and decreed the
plaintiff's suit, with costs, in favor of plaintiff.

Kistomohun appeals against the decision, admitting that the
kuboolant is written on plain paper, but urging that it must be
regarded as the counterpart of a ryottee pottah, which would be
exempted under the stamp laws.

I do not consider the appellants' plea good; it is only the pottahs
of *cultivating* ryots, which are exempted under the stamp law when
for a yearly rent exceeding 12 rupees. The present, as a julkur
lease, is clearly taxable with stamp duty under Sections 29 and 31,
Schedule A., Regulation X. 1829. I therefore confirm the decision
of the lower court, and dismiss this appeal.

ZILLAH BACKERGUNGE

PRESENT: W. J. H. MONEY, Esq., Judge.

THE 10TH JUNE 1850.

No. 123 of 1848.

Appeal from the decision of Mr. Jackson, Moonsiff of Backergunge, the 15th August 1848.

Suffurooddeen Khonkar, (Plaintiff,) Appellant,

versus

Kotubooddeen Moonshoe, Muneerooddeen Shikdar, Kazeer, Abdul Ali, Nader Ali, Budun Khatoun, with Ali, Mahomed Houssein, Baboo Khan, Mahomed Rowshan Shikdar, son of Roushun, Munwur Shikdar, Nasser Peerjan Beebee, Arjan Beebee, Ditya Beebee, Aynoolah, Mehede Talookdar, (Defendants,) Respondents.

THIS suit was instituted by the plaintiff for possession of an 8 annas share of a tenure called a zimma, with mesne profits and his damages at rupees 284, annas 14. It appeared from the plaintiff's statement that all the rights and interests in the Shikdar in howla Kotubooddeen, formerly howla Nasser, kismat Neamuttee, talook Mirza Hydur Ali, a khaffa, and Nasser nah Buzoorgomaspore, were attached by Government to this howla there was a zimma created prior to the year 1234, of which an 8 anna share of which the plaintiff purchased for a small portion from Mahomed Roushun, defendant, and Ruhmatulla Shikdar, deceased, on the 1st Chyte 1241, with other property, and the rent to the farmer and tehsildar of Government and of the collector of Backergunge: that in the year 1234, a portion of Ayad Shikdar being sold, the defendants, auctioneers, with the exception of the dwelling house, and the share of Muneerooddeen Shikdar, forcibly ejected him from the 8 anna share of the zimma.

Budun Beebee, who was the purchaser of the howla, Moonshoe, denied the existence of a zimma, made a declaration, and observed that the plaintiff had been ejected before the deputy collector in another case, by the system of besides which kuboolents had been

original auction purchaser, on the 29th Bysakh 1251, all which documents she had received.

The plaintiff, in his replication, alluded to the dur-ijardars, Mahomed Esuff and Mahomed Zakeer, having sued for an increase of rent for that zimma, and that the papers of the tuhsildars and dakhillas of the nazir would show the existence of that tenure.

Mahomed Roushun, Mahomed Shikdar, Noorjan, Peerjan, Arjan, and Ditya, corroborated the plaintiff's statement, and denied the delivery of kubooleuts mentioned by Budun Beebee.

Budun Beebee, in her rejoinder, observed that neither in the papers given by Neamutoolla to the ameen, nor in a petition filed by Kotubooddeen to sue as a *pauper*, was there any mention of this zimma.

The moonsiff did not consider there was any sign of a zimma existing in the records of the collector, to whom he had made a reference, and observed that, although in the accounts of Mahomed Jumma, ijardar for the year 1228, a zimma was recorded, yet these accounts could not be depended upon, as the farmer was related to Roushunoodeen, and the dur-ijardars, Mahomed Esuff and Mahomed Zakeer, were also his relatives; and seeing that neither in the accounts from 1196 to year 1227, nor, in the detailed account given by Neamutoolla in the year 1196, was there any sign of a zimma except for 1 kanee neej khamar land: he considered the plaintiff's claim unfounded and rejected it.

The appellant denied any detailed account of property having been given by Neamutoolla, and, if Kotubooddeen did suppress the existence of the zimma, his rights could not be affected thereby.

The respondents repeated their former pleas, referred to the copy of the terij delivered by Neamutoolla with his signature in the year 1196, which they had filed in this case, and considered it extraordinary that the plaintiff had been able to preserve dakhillas of an old date, when, according to the report of the record keeper of the collectorate, the Government records of the same period had been destroyed by an inundation: they declared, moreover, that though there might be a zimma within a talook, it was not customary in pergunnah Buzoorgomedpore for such a tenure as a zimma to be formed within a howla.

Although from the report of the record keeper of the Backergunge collectorate, a zimma appears to have been recorded in the khass taluk papers of the nazir of the collectorate for the year 1250, and in the jumma-wasil-bakee papers of Issur Chunder, who was the farmer from the year 1239 to the year 1248, yet from the absence of all sign of such tenure from the year 1196 to the year 1227, and from the circumstances under which it was recorded in the jumma-wasil-bakee papers of the farmer in the year 1228, adverted to by the moonsiff, the original existence of the zimma is certainly doubtful. However, the auction purchasers are not

of the description recognised in Section 26, Act I. 1845, I am of opinion the plaintiff could not be thus summarily ejected.

The appeal is therefore decreed, the moonsiff's order reversed, and the appellant will receive possession of the share of the zimma claimed by him, from Kotubooddeen Moonshee, Muneerooddeen Shikdar, Budun Beebee, Abdul Ali, and Nader Ali, with mesne profits from Bysakli 1251, and interest from the date of the amount being ascertained, and costs against the persons above-mentioned: the other defendants being released from all responsibility except that of the payment of their own costs.

THE 11TH JUNE 1850.

No. 122 of 1848.

Appeal from the decision of Mr. Jackson, Moonsiff of Bowfaul, dated the 30th August 1848.

Prankishen Singh, (Defendant,) Appellant,

versus

Sonaoolla Shikdar, Doonee Shikdar, and Nujumooddeen, (Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiffs for possession of 2 kances, 14 gundahs, 1 cowree of land, with mesne profits, connected with their howla in the 4 anna share of the principal defendants in talook Rampershad Singh, mouzah Dundee, kharija pergunnah Buhadonuggur, laying their damages at 148 rupees, 4 pie, 19 krants.

The reply of Prankishen Singh was to the effect that in the year 1249 the land was allowed to lie fallow and arrears accrued, and on the 15th Jyte 1250 Sonaoolla, Dporeen, Nujumooddeen, and Chottoo Beebee gave up their land by a regular deed drawn up on stamp paper of which a copy was in the collector's office: that the howla was in fact broken up, and kubooleuts given to other sharers of the talook as cultivators.

Tokonee Beebee corroborated the statement of the defendant regarding the resignation of the land on the part of the plaintiffs.

Jugmohun Chand, who was a 2 annas sharer of the talook, confirmed also the defendant's statement as to the resignation of the land, and alluded to the plaintiff giving a kubooleut in his son's name as cultivator, and to their having admitted to the butwarrah ameen that they had no claim to a howla.

The replication of Sonaoolla was merely a repetition of his plaint, and a denial of the resignation, as alleged by Prankishen Singh.

The moonsiff discredited the deed of resignation, considered there was discrepancy in the evidence of the witnesses to its preparation, and not finding any record of it in the butwarrah ameen's papers, and being of opinion that the ejectment of the plaintiffs was established,

he gave a decreë, with mesne profits, against Frankishen Singh; releasing the other defendants.

The appellant observed that the plaintiffs had not sued for the entire howla but only for a portion; that Tokonee Beebee, their former sharer, had herself corroborated the fact of the respondents' having resigned their land, and, if the moonsiff entertained any doubts on the subject, he might have examined the butwarah ameen: that Adheenot Rae and Heenot Rae, the 4 anna sharers of the talook, were the promoters of this suit, and the serishtedar of the moonsiff's court, with whom they were connected, had been affording them assistance in the matter.

The respondents adhered to their former denial of the resignation of the land.

The chief point for consideration is whether the respondents did really give up their land. Now, considering that in the year 1247, the respondents complained to the collector of the attempts which were being made to break up their howla, I cannot look upon the deed of resignation filed by the appellant as a genuine document, unsupported as it is by any satisfactory and reasonable evidence. The decision of the moonsiff is therefore confirmed, and the appeal dismissed, with costs.

The complaint against the serishtedar of the moonsiff's court will be investigated in a separate proceeding.

THE 11TH JUNE 1850.

No. 155 of 1848.

Appeal from the decision of Moonshee Mafeezooddeen, Moonsiff of Mendigunge, dated the 13th November 1848.

Ram Churn Manjee, (Plaintiff,) Appellant,

versus

Mahomed Zukhee Chowdree, (Defendant,) Respondent.

THIS suit was instituted by the plaintiff to reverse the decisions of the uncovenanted deputy collector and deputy collector of Bulloah, under Regulation VII. 1799, and to recover the sum of Company's rupees 294, 4 annas, 2 pie. He represented that in the 9 annas share of pergunnah Dukhin Shabazpore, mouzah Sonarpore, and Rajapore, he had a howla consisting of 14 kanes 2 gundahs of land, assessed at a jumma of Sicca rupees 196, 1 anna, 5 gundahs; that the defendant, having taken a farm according to his statement, of the villages in question from the zemindars, and under the pretence of Company's rupees 186, 8 annas, 19 krants, principal and interest, being due from him as zemindar, after deducting 2 rupees paid, at a rent of Company's rupees 276, 1 anna per annum for 13 cowrees, 4 gundahs, 3 krants of land, sued him in the deputy collectorate of Bulloah,

that he (plaintiff) attended and deposited in court the sum of rupees 294, 4 annas, 2 pie, including costs, but the uncovenanted deputy collector gave a decree against him, which was confirmed, in appeal, by the deputy collector of Bullooah.

Mahomed Zukhee Chowdree denied the existence of the howla, declared that he had received a farm of the villages mentioned from the zemindars, and in the papers delivered by them there was a kursa zimma, recorded as being in the possession of the plaintiff, consisting of 13 cowrees, 4 gundahs, 2 krants of land, at a jumma of Company's rupees 276, 1 anna, 10 pie per annum, on account of which, after deducting 2 rupees paid, there remained a balance of Company's rupees 286, 8 annas, 19 gundahs, principal and interest, for which he sued the plaintiff in the Bullooah collectorate, and in the reply in that case no allusion was made to a howla.

Edmund Kent Hume and Arratoon Harrapiet Arratoon, zemindars, corroborated the defendant's statement.

The plaintiff, in his replication, commented upon the want of specification regarding the farm, and also the papers delivered by the zemindars, namely, for what period the former was given and under whose signature the latter had been signed: he persisted in his howla being of long standing, and in the dakhillas he had received the word "zimma" had been inserted in lieu of "howla."

The moonsiff referred to the papers filed by the defendant and the evidence adduced in the summary suit, to the silence of the plaintiff on that occasion regarding the existence of a howla, to the fact of the zemindars having supported the defendant's statement, to there being no doubt of the plaintiff's ryuttee tenure within the farm of the defendant, and the absence of all proof of a howla from the dakhillas produced, and dismissed the claim of the plaintiff, upholding the summary decisions of the deputy collectors.

The appellant reiterated his former arguments, and insisted that as there was no written engagement contracted, and nothing mentioned about instalments, the demand of interest was erroneous; that in another case, in which he had complained against the defendant for forcibly taking a kubooleut for this very land, he had gained a decree from this moonsiff.

On looking at the case mentioned by the appellant it appears that the respondent was cast in a suit brought against him for forcibly taking a kubooleut from the appellant, and very properly so; but in this case, as the appellant does not deny his possession of the land in question, the only question for consideration is the existence of a howla or not; and as, in my opinion, no evidence whatever has been adduced in support of the appellant's claim, I see no reason to disturb the decision of the moonsiff, which is confirmed, and the appeal dismissed, with costs.

THE 14TH JUNE 1850.

No. 149 of 1848.

Appeal from the decision of Baboo Obhoy Comar Dutt, Moonsiff of Burrisaul, dated the 16th November 1848.

Nuwab Jan and Puncha Beebee, wife of Mea Jan, deceased, mother and guardian of Baber Ali, minor, (Defendants,) Appellants,

versus -

Kajul Khan, Shurban Beebee, wife of Esoff Khan, mother of Baboo Khan, minor, and Majoo Beebee, wife of Babeeroolla, mother of Affoo, minor, and Armonja Beebee, wife of Fukeer Mahomed, mother of Kadir, minor, and Shookoor Khan and Alif Khan, themselves, and as guardians of Chand Khan, and Roop Jan, wife of Hyat Khan, deceased, and Doola, wife of Zahir, (Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiffs for possession of an 8 anna share of hereditary property, with mesne profits, laying their damages at 228 rupees, 13 annas. They represented that, in the 3 annas and 5 annas 10 gundahs share of pergunnah Shazadpore, mehal Newaree, in Soorjpassu, and other kismuts in talook Soojagul Khan, Moossa Khan, the ancestor of Soojaoodeen and Puncha Beebee, and of themselves, plaintiffs had a share recorded at a jumma of Sicca rupees 19, 8 annas; that after the death of Moossan Khan and his wife Borye Beebee and his sons Kaim Khan, Saheb Khan, and Sumush Khan, and his daughter Gouree Beebec, the property being divided into sixteen portions, an 8 anna share belonged to Roopban, Soojaoodeen, Armanee, Puncha, and the other 8 anna share to Kajul Khan, Shurban Beebee, Nujjoo Beebee, Aurunja Beebee, Hyat Khan, and after his death to Shookoor Khan and Alif Khan, for themselves and as guardians of Chand Khan, and Tola Beebee, and Roop Jan, according to the portions noted in the

	As.	Gs.	margin: that the collections were under
Roopban,.....	1	0	the superintendence of Soojaoodeen from
Soojaoodeen,	0	4	whose management they derived very
Armanee,	0	16	little profit, and in the commencement of
Puncha,	0	16	the year 1245 Soojaoodeen colluded
Armanee, 2nd,	0	4	with Puncha's husband, Meca Jan, and his
Kajul Khan,	2	8	brother, Nuwab Jan, and the aforesaid
Shunkur Beebee,	1	4	Meca Jan, on the grounds of having pur-
Moyjoo Beebee,	1	4	chased an ousut talook and a 5 annas,
Armanja Beebee,	1	4	6 gundahs, 2 cowrees, 2 krants share of
Hyat Khan,	2	0	the talook from Bunsee Budun Rae, deceased, and the remaining

10 annas, 13 gundahs, 1 cowree, 1 krant share from Soojaoodeen, Puncha, and Roopban, dispossessed the plaintiffs and was in possession

of the entire 16 annas share : and after his death Puncha and Nuwab Jan, for themselves and as guardians of Baber Ali, minor, were in possession ; and Nuwab Jan, with the collusion of Soojaoodeen, brought a false case under Act IV. 1840, in which Kajul Khan, who was ejected in the year 1245, was made to appear still in possession, the case being decided without his knowledge. The plaintiffs denied the existence of any ousut talook, or the purchase of the 5 annas, 6 gundahs, 2 cowrees, 2 krants share by Bunsce Budun Rae ; and Soojaoodeen and Puncha and Roopban, being the proprietors of a small portion, had no authority to dispose of the shares of the plaintiffs and of Armanee defendant.

Nuwab Jan and Puncha Beebee denied the right of the plaintiffs and also Sumush Khan and Gouree Beebee, as heirs of Moossa Khan ; they observed that in talook Soojagul Khan, Moossa Khan had a share recorded at a jumma of Company's 20, 5 annas, 5 pie, his talook being established in his name ; that after his death and that of his wife, Burye Beebee, and his sons, Kaim Khan and Saheb Khan, Puncha Beebee and Sojaooddeen and Roopban were in possession, the two former as the son and daughter of *Abbass Khan*, son of *Saheb Khan*, and Roopban as wife of *Manik Khan*, son of Kaim Khan ; that on the 32nd Jyte 1233 Saheb Khan gave an ousut talookdaree lease of 8 beegahs of land for a consideration to Gopal Kishen Chuckerbuttee, who in conjunction with his sharers sold the same on the 7th Bhadoor 1238 in the name of Sham Chunder Doos to Bunsee Rae *alias* Mooraree Mohun Rae, to whom also Sojaooddeen sold a 5 annas, 6 gundahs, 2 cowrees, 2 krants share of the talook, which with the ousut talook was afterwards transferred for a consideration to Meea Jan, husband of Puncha Beebee, and brother of Nuwab Jan, and a 10 annas, 13 gundahs, 1 cowree, 1 krant share was sold to the aforesaid Meea Jan by Puncha Beebee, Roopban, and Sojaooddeen ; that after the death of Meea Jan they were in possession on account of themselves and as guardians of Baber Ali, minor, when, in consequence of the opposition of Doorgaguttee Rae, Sojaooddeen Khan, and Kajul Khan, a suit for possession under Act IV. 1840 was brought against them, on which occasion Sojaooddeen Khan styled himself and Kajul Khan as in possession of and entitled to a 5 annas, 6 gundahs, 9 cowrees, 2 krants share of the talook, and although false evidence was produced to support his claim a decree was given in favor of them, Nuwab Jan and his party ; and they concluded by observing that, as the plaintiffs had not sued to reverse that summary order Act IV. 1840, their plaint was irregular.

The plaintiffs, in their replication, observed that Moossa Khan had two wives, namely, Burye Beebee by whom there were two sons, Sumush Khan and Haleem Khan, that Haleem Khan died without heirs and Kajul Khan was the son of Sumush Khan, and Shurban Beebee and Majjoo Beebee and Aurunja Beebee his daughters ; that

the other wife of Moossa Khan was Agoa Beebee by whom there were two sons Kaim Khan and Saheb Khan, and a daughter Gouree Beebee: they repeated the collusion of the defendant Puncha, Roopban, and Soojaoodeen, and claimed the protection to which they were entitled as heirs.

Soojaoodeen, Roopban, and Armanee observed that Meea Jan had the management of the talook from 1245 to the year 1252, and after his death that Soojaoodeen was dispossessed through the collusion of Nuwab Jan and other defendants, and denied the grant of the ousut talook, or the sale of the 5 a., 6 g., 2. c., 2 k., and 10 a., 13 g., 1 c., 1 k., shares as stated by the other defendants.

The moonsiff did not consider the question to be one of inheritance but of possession; and being of opinion that the right of the plaintiffs was in some measure proved by the reply of Soojaoodeen and their former possession established, and referring to the absence of all documentary proof in support of the ousut talook and the purchase alluded to by Puncha and Manik Jan, he gave a decree against the aforesaid defendants, with mesne profits.

The appellants complained of the moonsiff in opposition to their request, taking the evidence of four witnesses of the plaintiffs, who had been tutored by them, and considered it extraordinary that the moonsiff should be guided, in his decision, regarding the rights of the plaintiffs (respondents,) by the reply of Soojaoodeen, who, as well as Kajul Khan, were both made defendants by the appellants in the case under Act IV. 1840; that Soojaoodeen, in his statement, on that occasion, alluded to Kajul Khan's right, but the latter gave no reply, and seeing the result of the decision in that case he had in the present instance brought the suit through Kajul Khan, making himself defendant for the purpose of confessing judgment; that in the case under Act IV. 1840, Soojaoodeen represented Kajul Khan as being in possession previous to the institution of that case, whereas in Kajul Khan's plaint and Soojaoodeen's reply in this case, and in the evidence of the witnesses, it was stated that Kajul Khan had been dispossessed for a period of 8 or 9 years, which inconsistencies were of themselves sufficient to invalidate the claim of the plaintiffs.

Respondents have made no further remarks.

I disagree with the moonsiff in his reasons for giving a decree in favor of the respondents, particularly in connection with the reply of Soojaoodeen, for the rights of the defendants cannot be injured by any thing Soojaoodeen may choose to do; and considering that Soojaoodeen was a defendant in the case brought by Nuwab Jan and others under Act IV. 1840, any statement from him should be received with caution, and, certainly, does not admit of much weight. I am of opinion, moreover, that this was most particularly a case of inheritance, for upon that hinged the validity or otherwise of the claim of the respondents.

The omission therefore of the former moonsiff to make proper enquiries on this point and ascertain the truth of the respondents' being heirs of Moossa Khan, which is denied by the appellants, renders the investigation in this case defective. The appeal is therefore decreed, and the former moonsiff's order reversed, and the case returned to the present moonsiff, who, after satisfying himself upon the point adverted to will decide the case upon its merits.

The amount of stamp paper, on which the appeal is engrossed, will be refunded to the appellants.

THE 17TH JUNE 1850.

No. 12 of 1847.

*Appeal from the decision of Moulee Mahomed Kuleem, Principal Sud-
der Ameen, dated the 20th January 1847.*

Radhanath Banerjee, (Defendant,) Appellant,

Ekramoola, Sheikh Boodhoo, Sheikh Abdool Shookoor, Sheikh Decanutoolla, Surban Beebee, and Kootubjan Beebee, mother of Ukburoolla, deceased, (Plaintiffs,) Respondents.

THE plaintiffs sued as paupers to reverse the sale of 2 annas, 15 gundahs, 2 cowries, 2 krants share of a talook, and to obtain possession of their share, with mesne profits, laying their damages at 4738 rupees, 14 annas, 3 pie, 18 krants. They represented that in the 5 annas 15 gundahs share of pergunnah Salcemabad, the zumeendarce of Sutt Churn Ghosal, kismut Gundhurbpore and other kismuts, there was a talook called Hossein Vukeel, of which an 8 annas share belonged to Lall Mahomed, and of the remaining half a 4 annas share belonged to Hookmoola, grandfather of Ukburoolla, and to Ghous Mahomed, father of Ekramoola, Boodhoo, Abdool Shookoor, and Decanutoolla, and a 4 annas share to Inamooddeen: that Gopal Chunder Palit, a sharer to the extent of 6 annas 10 gundahs in Lall Mahomed's share, took a farming lease from the plaintiffs of Ghous Mahomed's 4 annas share, the mofussil assets of which were 215 rupees, 12 gundahs, leaving out burmottur, cheraghee, and other descriptions of land from the 1st of Bysakh 1233 to the month of Assin 1243, a period of ten years and six months, and gave them a kuboolcut duly registered to this effect, that, after paying the sudder revenue, the mofussil and other expenses enumerated in the kuboolcut, he would assign to the plaintiffs yearly the sum of 4 rupees, 12 annas, 12 gundahs: that in the year 1235 Debnarain Rae and Bis-
hunt Rae Chowdree, under the pretence of having purchased a one

anna share, the rights of Kureem Khan, complained against the plaintiffs and Imamooddeen, and gained a decree for 10 gundahs from each of their shares: that in the year 1228, Bishunt Rae Chowdree purchased, in the name of his agent, Nubkishore Sein, the right and interest of one Hookmoolla, being a 15 gundahs, 2 cottahs, 2 krants share out of Ghous Mahomed's share: that in the year 1239, the farmer Gopal Chunder Palit fraudulently kept back the revenue, and caused the remaining share of Ghous Mahomed to be lotted for sale, when they (plaintiffs) were obliged to pay the revenue and rescue their property: that again in the year 1242, the farmer, through the collusion of Bishunt Rae and Nubkishore Sein, kept back the revenue, and, after the summary decree on the part of the zemcendar, caused a notice to be issued for the sale of a 2 annas, 5 gundahs, 2 cowrees, 2 krants share, unknown to them (plaintiffs,) and, contrary to the terms of the notice, purchased, in the names of the parties above mentioned, a 2 annas, 15 gundahs, 2 cowrees, 2 krants share: that they (plaintiffs) sued to cancel that sale and obtain possession with mesne profits; but the case was struck off the principal sudder ameen's file on two occasions and replaced in consequence of their appeal: that while their suit was pending, the revenue of the land in question was again kept back, and, through the collusion of Gopal Chunder Palit and Russiknarain Rae, the 2 annas, 15 gundahs, 2 cowrees, 2 krants share was sold without their knowledge on the 17th Bhadoon 1249, and purchased by Russiknarain Rae in the name of his servant, Radhanath Banerjeea: that on the 27th June 1843, the former principal sudder ameen nonsuited them in consequence of their having included the share of Hookmoolla, which had been sold, and directed them to amend their plaint and sue for their respective rights, excluding the share of Hookmoolla: that they therefore sue for the reversal of both the sales alluded to, and, after subdividing the 3 annas 10 gundahs share into sixteen parts, and deducting the rights of other sharers, for possession of their own share, 12 annas 5 gundahs, with mesne profits.

Radhanath Banerjeea contended that the plaint was irregular, that the sale had taken place under the summary decree, which the plaintiffs had not sued to cancel, and unless the decree was upset, the sale could not be interfered with, and quoted the case of Kishenkanth Hajra, petitioner, decided by the Sudder Court on the 5th October 1841: he denied the charge of fictitious purchase and declared there was no irregularity in the case.

The plaintiffs, in their replication, observed that the case of Kishenkanth Hajra was not applicable; that they were not parties to the summary suit; that the sale was irregular and the purchase fictitious; that Doorgamonee Chowdrine, wife of Russiknarain, was in possession in the year 1252, and caused the property of the ryots to be attached and sold by the native commissioner, as could be seen from the papers of collector's office.

The principal sudder ameen considered that, although Gopal Chunder Palit, from the terms of his kubooleut, had made himself responsible for the payment of the revenue, he had wilfully caused a balance, and the consequent sale of the land in question: that the sale was irregular, inasmuch as notice was issued for a 2 annas, 5 gundahs, 2 cowrees, 2 krants share, and the amount actually sold was a 2 annas, 15 gundahs, 2 cowrees, 2 krants: that an *ex parte* decree was obtained against the heirs of Nubkishore Sein, excluding the names of the plaintiffs, and the property again sold in pursuance of that decree, and purchased by Russiknarain Rae, the son of Bishunt Rae, in the name of Radhanath Banerjeea, Doorgamunee, the wife of Russiknarain, the son of Bishunt Rae, being afterwards in possession: and being of opinion that a summary sale could be cancelled without the necessity of reversing the decree under which it took place, he decreed in favor of the plaintiffs, with mesne profits, and interest and costs against Doorgamunee, Gopal Chunder Palit, and Radhanath Banerjeea.

The appellant observed that the 3 annas 10 gundahs share of Ghous Mahomed's was not sold, that a 14 gundahs, 1 cowree, 1 krant share had been previously disposed of to Gopal Chunder Palit by virtue of two kuballas, dated the 25th Jyete 1236 and the 27th Bhadoor 1240, and that the remaining 2 annas, 15 gundahs, 2 cowrees, 8 krants share, when sold in the first instance for arrears of rent under a summary decree, was purchased by Nubkishore Sein, and on the second occasion by himself: he observed further that, after deducting the share of Soonye Beebee and Hookmoola, alluded to by the plaintiffs, and the share of Gopal Chunder, there remained in fact out of the 3 annas 10 gundahs share, after subdividing it into sixteen portions, a 7 annas, 8 gundahs, 2 cowrees share, whereas the plaintiffs had claimed a 12 annas, 5 gundahs share: that, as the sale under which he had made his purchase was not pronounced to be irregular, it could not be upset without reversing the summary decree: and as the right of the plaintiffs had been previously sold, they could not be included as defendants in the decree under which the second sale took place.

Gopal Chunder, who gave no reply in the court below, claimed the privilege of being heard in appeal under Construction No. 997, and preferred objections similar to those urged by the appellant.

The respondents observed that their claim did not include what had been already sold, and repeated the objections urged before: they insisted upon the purchase being fictitious, and referred to several cases as precedents to show that a summary sale could be reversed, without the necessity of upsetting the summary decree, when affecting persons not parties to the suit.

On a former occasion when this case was before me, I recorded my opinion as to the irregularity of the first sale, and my suspicion

of the second sale's being fictitious and purposely effected to prevent, if possible, the reversal of the first sale, and I nonsuited the respondents (plaintiffs) for what I considered an irregularity, in having inserted in their plaint the share connected with the kuballas of Gopal Chunder Palit, which they were told by the civil court in a former instance to exclude. On an appeal being preferred by the respondents, the Sudder Court, not thinking the irregularity a fair ground of nonsuit, directed the case to be replaced on the file in order that a deduction might be made from any excess claimed by the respondents, provided that in other respects their claim was established.

On a re-perusal of the papers, I adhere to my former opinion of the irregularity of the first sale, which was caused by the collusion of Gopal Chunder Palit, who wilfully allowed a balance to accrue in direct opposition to the terms of his agreement with the respondents. The first purchase was made by Bishunt Rae in the name of Nubkishen Sein: the subsequent *ex parte* decree therefore against the heirs of Nubkishen Sein, and the purchase by Russiknarain Rae, son of Bishunt Rae, in the name of the appellant, his servant, and the established possession of Doorgamonce, wife of Russiknarain Rae, prove the second sale to have been fraudulent, the purchases in both instances being on account of the same party. As the respondents were not parties to the summary suits in question, the case of Kishenkanth Hajra, quoted by the appellant, does not apply in this instance. The order of the principal sudder ameen, reversing both sales must therefore be confirmed. As however the respondents have included in their plaint more than they are entitled to, some deduction must be made, that is, an additional 1 anna, 11 gundas, 2 cowrees, 1 cog, $11\frac{1}{2}$ teels share on account of Hookmoola's 15 gundas, 2 cowrees, 2 krants share, divided into sixteen portions, sold in the year 1238, and in the same manner a 3 annas, 5 gundas, 2 cowrees, $7\frac{1}{2}$ teels share on account of the kuballas of Gopal Chunder Palit, which will leave, out of the 12 annas, 5 gundas claimed, a 7 annas, 7 gundas, 3 cowrees, 19 teels share, which I decree to the respondents, amending the principal sudder ameen's order in this respect: on all other points the order of the principal sudder ameen is confirmed, and the appeal dismissed, with costs against the appellants in proportion to the amount decreed, and the respondents will be responsible for all costs connected with the deductions alluded to.

THE 18TH JUNE 1850.

No. 47 of 1847.

Appeal from the decision of Moulvee Mahomed Kuleem, Principal Sudder Ameen, dated 10th May 1847.

Nuwab Jan Beebee, wife of Shumsheer Ali Chowdree, mother of Aftar Ali, minor, and Rujub Ali Bhooya, (Plaintiffs,) Appellants,

versus

Muzzuroolla Nazir, Tumuzzooddeen Putwaree, and Ameerooddeen Karee, (Defendants,) Appellants.

THIS was a suit instituted by the plaintiffs, to recover the sum of rupees 1545, annas 13, pie 10, krants 8, principal and interest, after deducting 60 rupees paid, on account of the sum of 1000 rupees Sicca, borrowed on a bond from Rujub Ali Bhooya and Shumsheer Ali Chowdree, husband of Nuwab Jan, on the 16th Assar 1249, an explanation being inserted in the bond, showing that the letters of the signature of Ameerooddeen, one of the witnesses, had been defaced by the ink.

Muzzuroolla and Tumuzzooddeen denied the loan, and observed that Ameerooddeen had no connection with them whatever, being of an inferior station in life: that Company's rupees were current in the year 1843, and therefore it was strange that Sicca rupees should have been inserted in the bond; that no particulars had been given as to the place where the loan was contracted, for they could prove an *alibi*, but did not mention it at present for fear of damaging their case: that the suit, moreover, had been instituted entirely from spiteful motives, originating in a dispute between them and a relation of Rujub Ali.

The plaintiffs, in their replication, observed that the payment of the 60 rupees interest had not been denied, and that at the time the loan was contracted Ameerooddeen was a servant of Muzzuroolla, and is now in the employ of Tumuzzooddeen.

The principal sudder ameen considered the bond to have been written upon old paper, and that, although the name of Ameerooddeen Khulifa was recorded on the back of the paper as purchaser, there was no khulifa amongst the parties concerned: that notwithstanding the paper was stated by the witnesses of the plaintiffs to have been bought by the defendant, no such fact was recorded nor for what purpose the purchase was made: and, being of opinion that the defacement of the signature of Ameerooddeen was purposely effected from fraudulent motives, he dismissed the claim, with costs.

Nuwab Jan, appellant, repeated her former arguments in support of the bond, and observed that it was not usual to specify the purpose for which a stamp was purchased; that the defacement of the signature had been clearly noted, and therefore no suspicion could attach

to the bond on that account: that as the respondents did not produce any of the proofs required by the principal sudder ameen, it was singular they should have been released from responsibility: that on the 18th Chyete 1253, while the case was pending, the respondents thinking there was no chance of escape were glad to compromise the debt, 600 rupees, giving 300 rupees in cash and a bond for the balance, taking a receipt for the original claim.

Rujub Ali filed a petition, corroborating Nuwab Jan's statement.

The respondents observed that the very fact of the compromise threw suspicion upon the whole transaction; and if there had been any relinquishment of the claim recorded, the appeal on the part of the appellants was irregular.

The validity or otherwise of the original bond is the only question for consideration. I can discover nothing suspicious in the appearance of the paper, as noted by the principal sudder ameen; nor do I consider any one of the reasons recorded in his decision sufficient to invalidate the instrument; and as the respondents, moreover, have not adduced any proof in support of the assertions contained in their reply before the lower court, I decree the appeal, reverse the principal sudder ameen's order, and the appellants will receive the amount claimed, with interest to the date of payment, with all costs against the respondents.

ZILLAH BEERBHOOM.

PRESENT : F. CARDEW, ESQ., JUDGE.

THE 8TH JUNE 1850.

Case No. 206 of 1849.

Regular Appeal from a decision passed by the Moonsiff of Soory, Koolodanund Mookerjee, August 25th, 1849.

Goburdhun Singh Rujuk, (Plaintiff,) Appellant,

versus

Purbuttee Dasya, Chumpa Dasya, and others, (Defendants,) Respondents.

THIS suit was instituted on the 25th March 1848, to set aside an order passed by the magistrate under Act IV. 1840, and to recover the value of three stacks of paddy and possession of 16 beegahs of land, with mesne profits; also to recover the value of the produce of 12 beegahs of land for the year 1254 B. S., the whole being estimated at Company's rupees 290-11-1.

The substance of the plaint is, that the plaintiff had married the daughter of the defendant, Chumpa Dasya, and grand-daughter of the defendant, Purbuttee Dasya, and his wife being very young, and the nature of his employment as a police burkundauz obliging him to be constantly absent from home, he, on his marriage, quitted his own place of abode, situated in another village, and took up his residence in his mother-in-law's house; that he afterwards engaged in agriculture, and in 1246 took a lease of 16 beegahs of lakhiraj land, situated in mouzah Lumbodurpore, in *benamee*, in the name of his wife's maternal uncle, Haradhun Rujuk, and on his death transferred it to the name of Purbuttee Dasya; that in 1247 he took a lease, in *benamee*, in the name of Neetaie Rujuk, of 12 beegahs of land, situated in mouzah Busuntpore, which he relinquished at the close of 1254, and in 1248 and 1249 he engaged, in *benamee*, in the name of Purbuttee Dasya, 7 beegahs of *mal* land in mouzah Lumbodurpore, which he resigned at the close of 1253; that the paddy, the produce of these lands, up to 1253, was stored in three stacks, and plaintiff having, in the month of Assin 1254, sold 20 rupees' worth of the same, his mother-in-law quarrelled with him and

brought a complaint against him in the foudaree court, the result of which was that she was put in possession of the three stacks of paddy, and virtually of the lands, by an order passed by the magistrate under Act IV. 1840, on the 27th February 1848: and hence the cause of this action.

The defendants, Purbuttee and Chumpa Dasya, in answer, denied the claim, stating that the whole of the land was engaged *bonâ fide* by themselves, and that the plaintiff had nothing to do with it; but they acknowledged that they had made over the 12 beegahs of land, situated in mouzah Busuntpore, to the plaintiff's wife, and that part of the produce of that land was included in the three stacks.

The moonsiff was of opinion that the evidence of the witnesses for the plaintiff failed altogether to establish his right to the two parcels of land situated in Lumbodurpore; and that, on the other hand, the title of the defendants to the said lands was clearly proved by the evidence of the witnesses examined on their part, and by the production by them of the original pottahs and receipts for rent, all in the name of Purbuttee Dasya: and this evidence was confirmed in respect to the 16 beegahs by a *kyfeet*, or report, filed by the lakhirajdars, Benode Ram Sein and others, in the foudaree case, which *kyfeet* was called for by the magistrate at the request of both parties. The moonsiff accordingly dismissed the claim in regard to those lands; but he considered the plaintiff's title to the 12 beegahs of land situated in mouzah Busuntpore established, and therefore decreed to him the sum of Company's rupees 23-12-6, the value of the produce thereof for 1254, but he declined awarding any share of the three stacks, because it was not shown what specific quantity of paddy belonged to this land.

The plaintiff contends in this court that his claim to the land situated in Lumbodurpore is fully proved by his witnesses, and states that the pottahs and receipts for rent were left by him in the defendants' hands, as they managed his affairs in his absence on duty. But if this were true he would at least have brought forward the witnesses in whose presence the leases were taken, but he did nothing of the kind; the evidence of his witnesses is vague and uncertain and chiefly hearsay, and I entirely concur with the moonsiff in his decision in respect to that land. I however do not concur with him in the reason given for not awarding a share of the stacks. Both parties are agreed that the produce of the whole of the land was included in the stacks; and, considering the plaintiff entitled to a proportionate share, I award to him, in amendment of the moonsiff's decision, the further sum of rupees 26-7-6, being the value of 59 measures, (*map*.) 4 *sulees*, 11 *pies* of paddy, as per the following account:

Quantity of paddy sued for, being 5 <i>pootees</i> , or measures,	260	0	0
Quantity sold by plaintiff for 20 rupees, at the rate entered in the plaint,	45	0	0

Total quantity contained in the three stacks,	305	0	0
Plaintiff's share being in the proportion of 12 in 35, the total quantity of land,	104	4	11
Deduct quantity received by plaintiff as above,	45	0	0

Remainder, measures	59	4	11
Value, at the rate entered in the plaint, Company's rupees,	26	7	6
The costs of suit in both courts to be charged to the parties <i>pro rata</i> to judgment.			

THE 28TH JUNE 1850.

Case No. 20 of 1850.

*Regular Appeal from a decision passed by the Moonsiff of Sarhut,
Sumeenooddeen Ahmud, December 9th, 1849.*

Baboo Isreenund Dutt Jha, (Defendant,) Appellant,

versus

Gunnoo Misr *alias* Guncesh Misr, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff as hereditary servitor of the temple of Boidnauth at Deoghur, on the 22nd September 1848, corresponding with the 8th Assin 1255 B. S., to recover from the defendant, Baboo Isreenund Dutt Jha, the *qjha*, or superintendent, of the temple, the principal sum of Company's rupees 192-12-9, and interest thereon to the amount of rupees 106-8-8, total rupees 299-5-5, being on account of a 4 annas share of a *mooshaira*, or monthly salary, of 4 rupees, and a *rozeena*, or daily allowance, of 1½ anna, from 1246 to 1255 B. S., as originally assigned from the offerings of the temple to the plaintiff's ancestor, Lalun Misr, for the performance of the *poojah*, or worship.

The defendant, in answer, objected, amongst other matters, to the claim to interest.

The moonsiff decreed the sum sued for in full, recording, in reference to the defendant's objection to the claim to interest, that there was no regulation prohibiting the courts from decreeing interest in such cases; that in a similar case instituted by Jooree Misr, in which interest was not included in the claim, the judge, in appeal, awarded interest from the date of the decision of the lower court; and that it was proved by the evidence of the plaintiff's witnesses, Bechoo Jha Mukuddum and Seeboo Ghureedar, that the plaintiff had made intermediate demands, which were put off by the defendant with promises.

The claim to interest is the only matter disputed in this point, and it is, in my opinion, untenable with reference to Act XXXII. 1839. There is no proof on the record of any intermediate demand until the end of Bhadro 1255, or a few days before the date of insti-

tution of the suit ; the demand was a verbal one, and I hold it to be insufficient to warrant a judgment for interest, more especially as the great delay in instituting the suit has not been accounted for. I therefore decree the appeal, and, in amendment of the decision of the lower court, award interest only from the date thereof. Costs of suit in the lower court to be charged to the parties *pro rata* to judgment ; the costs in this court to the respondent.

THE 28TH JUNE 1850.

Case No. 21 of 1850.

*Regular Appeal from a decision passed by the Moonsiff of Sarhut,
Sumeenooddeen Ahmud, December 19th, 1849.*

Baboo Isreenund Dutt Jha, (Defendant,) Appellant,

versus

Puchun Misr, (Plaintiff,) Respondent.

THIS case is similar in every respect to that of No. 20 of 1850, decided this day, and the same judgment applies.

ZILLAH BEHAR.

PRESENT: FRANCIS LOWTH, Esq., ADDITIONAL JUDGE.

THE 4TH JUNE 1850.

No. 195 of 1848.

Appeal from a decision of Sheikh Kasim Ali, former Additional Moonsiff of Gyah, dated 16th September 1848.

Syud Ashruff Ali, Appellant in the suit of Ahburrun Singh,
Plaintiff, Respondent,

versus

Appellant, Mittur Singh, and Purshun Lall, Defendants.

THIS suit was instituted on the 25th February 1848, to recover rupees 36-5, principal and interest of a bond, dated 1st Kartikh 1249 F.

The plaintiff states that mouzah Yusuff Chuck, pergunnah Arwul, is the property of Syud Ashruff Ali, and the other two defendants are his umlahs; that Ashruff Ali wrote him a note, dated 28th Assin 1249, requesting him to supply Mittur Singh with funds up to 25 rupees, to enable him to make advances to the ryots for seed, &c., and at the same time to take a bond from him, and that he (Ashruff Ali) would repay whatever was advanced with interest out of the harvest of 1249; accordingly Sicca rupees 19-2-6 were advanced to Mittur Singh and Purshun Lall, from whom plaintiff took a bond to the effect that the money should be paid on the 30th Bysakh 1249; but as he cannot obtain payment this suit is instituted.

Ashruff Ali, defendant, denies having ever written the note, and states that he knows not the plaintiff; that he cannot write Hindsee, that Yusuff Chuck is not his property, but belongs to Beebee Doolhin, and he has no concern with it, and that the suit has been brought at the instigation of the other two defendants, of whom Purshun Lall is plaintiff's servant.

Mittur Singh and Purshun Lall support the plaintiff's statement, and declare the money to have been taken to enable them to have the village lands cultivated, that the debt is Ashruff Ali's, and he should pay.

The moonsiff decrees the claim, on the grounds that the plaintiff's case is proved by witnesses and the acknowledgment of the debt by Mittur Singh and Purshun Lall.

Ashruff Ali, in appeal, urges that the case has been decided against him without due consideration, and that the moonsiff never required the other two defendants to prove the note filed to have been written by him.

Respondent has filed no reply.

I consider the proof against the two defendants, Mittur Singh and Purshun Lall, sufficient and good : but against the appellant, besides the note alleged to have been written by him, and which is not, nor was attempted to be, proved, no proof is adduced ; he should therefore be released from the claim in this suit. I therefore amend the decree of the lower court, reversing that portion of it, which applies to the appellant, and confirming it in respect to the other two defendants, who must bear the whole of the costs in the original suit, and respondent those of the present appeal.

THE 10TH JUNE 1850.

No. 199 of 1848.

Appeal from a decision of Moulvee Humeedooddeen Ahmud, Moonsiff of Aurungabad, dated 2nd September 1848.

Sujeewun Lall and Mohun Lall, (of the two Defendants,) Appellants,
in case of Baboo Narain Singh, Plaintiff, Respondent,

versus

Appellants, and Gopal Sahoo, and Chuttoo Lall, Defendants.

THIS suit was instituted on the 22nd January 1848, or 2nd Maugh 1255 F., to recover rupees 123-5-9, principal and interest of a bond, dated 18th Assin 1253 F.

The plaintiff states the bond to have been executed by Sujeewun Lall and Mohun Lall, in favor of Gopal Sahoo and Chuttoo Lall, stipulating that they would repay the sum borrowed, rupees 82-9-3, in paddy, at the rate of 1 maund $32\frac{1}{2}$ seers per rupee equal to 149 maunds, 20 seers, 9 chuttacks, on the 30th Aughun of the same year ; that the bond was sold to him by the said defendants on the 30th Pous 1253, and for the amount of which he now sues.

Appellants, defendants, acknowledge having given the bond to Gopal Sahoo and Chuttoo Lall, but state that the amount has been liquidated by the plaintiff having taken some cattle in part payment, and deducting the balance from the monthly stipend of Mohun Lall ; in proof of which they produced a note, bearing date 3rd Chyte 1253, alleged to have been written by the plaintiff to Hursershaud Singh, in which the party addressed was requested to return the bond, the settlement of the debts having been effected as above noted.

Plaintiff denies this statement and affirms that the cattle were attached by his master, Birjlall Opudeah, for balance of revenue

due before the bond was executed, and therefore that transaction was in no way connected with that of the bond.

The appellants urged that the cattle so attached were directed to be returned to them, and requested that Birjall Opudeah himself might be called on to give evidence on the subject, as, on an adjustment of accounts in Sawun 1252, no balance of rents stood against them; they also petitioned for the evidence of Hurpershaud Singh being taken relative to the note above cited, but the moonsiff gave no consideration to their pleas.

There can be no doubt but that the moonsiff should have required the attendance of both these parties, Birjall Opudeah and Hurpershaud Singh, to set at rest the objections urged by the appellants; and by omitting to do so, the investigation must be considered incomplete, as the claim of the plaintiff rested entirely on the truth or otherwise of the defendant's statement. I therefore reverse the decision of the moonsiff, and remand the suit, that the evidence of the parties above named may be taken on the points noted, and then be decided on its merits. The stamp of appeal to be returned in the usual manner.

THE 11TH JUNE 1850.

No. 189 of 1848.

Appeal from a decision of Moulvee Mohummud Furreedooddeen, former Moonsiff of Aurungabad, dated 19th August 1848.

Rai Prankishen Mitter, appellant in the suit of Musst. Man Koower, heiress of Sarda Narain, Balgovind, Gopal Lall, and Musst. Jai Koower, (Plaintiffs,) Respondents,

versus

Appellant and Doorbejoy Singh, Defendants.

THIS suit was instituted on the 3rd December 1847, to reverse a summary decision of the collector of Behar, dated 20th June 1846, setting aside an attachment. Suit valued at rupees 40.

The plaintiffs, as part proprietors of mouzahs Kurrundee and Nursingha, pergunnah Kootumba, attached the property of Doorbejoy Singh, to whom their shares had been leased in farm, for arrears of rent of 1253 F., amounting to rupees 40: the farmer gave security and released his property, suing the plaintiffs in the moonsiff's court of Aurungabad to contest the attachment: that suit was dismissed on default. Rai Prankishen Mitter, the other defendant, also filed a suit before the collector of Behar to set aside the attachment, declaring himself to be the purchaser of one-third of the above villages, and obtained a decree on the 26th June 1846, the plaintiffs not having defended the case. The plaintiffs now sue for the reversal of that order, pleading that Rai Prankishen Mitter succeeded by purchase to only the share of Moorut Lall, who held but a fourth part of the one-third share of the villages in question, and that his claim to the

whole share cannot be sustained on any ground, and that in Rai Prankishen Mitter's suit before the collector they were not served with any notice and therefore failed to defend it.

Rai Prankishen Mitter entered no reply, whilst Doorbejoy Singh asserted his own liability.

The moonsiff, on the evidence of the plaintiffs' documents filed by them, declared Rai Prankishen Mitter's claim to be purchaser of one-third of the property to be incorrect, that the collector's order had been passed without any proofs being filed by Rai Prankishen Mitter, and therefore ought to be reversed; but as all the plaintiffs, with the exception of Musst. Man Koower, had allowed six weeks to elapse without taking any steps in the suit, and had thereby lost their case, the collector's order in their respect must be upheld; but in Man Koower's favor he gives a decree reversing that order, at the same time releasing the farmer from all responsibility.

In appeal, Rai Prankishen Mitter urges that the usual notice was not served on him, whilst respondents reply that not having defended the suit in the first instance, his appeal is inadmissible, according to Circular Order of the 12th March 1841.

The moonsiff's decision in this case appears to me altogether incorrect. On reference to the record it is evident that his remark relative to six weeks having elapsed without steps being taken in the suit, if applicable to one of the plaintiffs, should have applied to all, as the suit was instituted by all the parties in conjunction and through one pleader; moreover, by releasing the farmer from responsibility, his decree in favor of Man Koower becomes useless. The plaintiffs, however, should in the first instance have been nonsuited, as the suit was not instituted within the period laid down in Section 6, Regulation VIII. 1831. I therefore reverse the moonsiff's decision, and nonsuit the plaintiffs in the original action. Costs of this appeal and of the defendants in the original suit will be paid by respondents.

THE 11TH JUNE 1850.

No. 204 of 1848.

*Appeal from a decision of Syed Tufuzzool Hossein, Moonsiff of Gyah,
dated 28th August 1848.*

Jyejye Bunwar, Defendant, Appellant in the case of Munrakhun,
for self and as son and heir of Gheenaram, deceased, (Plaintiff,) Respondents,

versus

Appellant and Ramdyal Bunwar, Defendants.

THIS suit was instituted on the 5th January 1848, to recover rupees 20-8-0, principal and interest, as per account book of 1904 Sumbut.

Plaintiffs state that defendants took, from their shop, cotton valued at rupees 20-2-6, through their gomashtha, on the 20th Kartikh 1904 Sumbut, promising to pay for the same in 13 days, but failed to do so, hence the suit.

Jyeje defendant denies the claim *in toto*, and urges that as he keeps a separate shop, and is not in partnership with the other defendant, Ramdyal, he has no concern with him or the debt.

Ramdyal filed no answer.

The moonsiff remarks that the claim is proved to be correct, and due by defendants, from the evidence of witnesses and the statement of the ameen deputed to examine the plaintiff's books.

In appeal, the appellant has urged nothing new, save that the evidence of the plaintiff's gomashtha should not be considered worthy of credit, or received in support of the claim.

The appellant simply denies the debt, but has produced no proof in support of his statement, save the evidence of two witnesses, whose declaration on the point of appellant's having had no such transaction with respondents is not worthy of consideration, compared with the evidence adduced in support of the claim. I therefore dismiss the appeal, with costs, without summoning the respondent, and confirm the order of the lower court.

THE 13TH JUNE 1850.

No. 112 of 1848.

*Appeal from a decision of Moulvee Mohummud Abdool Luteef, Acting
Moonsiff of Jehanabad, dated 13th May 1848.*

Musst. Husscenah, widow of Sheikh Muzhir Ali, (Defendant,)
Appellant,

versus

Kasim Ali, Mullick Panchoo, and Mullick Wahid Ali, (Plaintiffs,) Respondents.

THIS suit was instituted on the 5th October 1847, to reverse a summary decree passed by the deputy collector of Behar, dated 27th March 1847. Suit laid at rupees 212-6-9.

The plaint sets forth that of mouzah Syedpore Massadce, pergunnah Ekil, the following shares, namely, 1 anna belonging to Kubbeer Hosein and others, 1 anna $6\frac{1}{2}$ dams of Ameer Ahsun and others, and 2 annas of Afzul Hosein, were let in farm to Kasim Ali, plaintiff, and that 16 dams, the share of Roshun Ali, together with 10 dams, the share of Mullick Dumree, were mortgaged to Gholam Kadir, who sold the mortgage to Sheikh Gujraj, master of Mullick Wahid Ali, plaintiff; that during the time, viz., from end of 1251 to end of 1253 F., when Kasim Ali was imprisoned, the defendant appropriated the produce of his farm and refused to give

up any portion, though demanded by plaintiff on his release from jail; defendant subsequently, styling himself "*dur ijarahdar*" on the part of Kasim Ali and purchaser from Roshun Ali, sued the plaintiffs for rents of 1253 F., in a summary suit, and obtained a decree against them as ryots, to reverse which they sue on the following grounds: because, first, Mullick Panchoo is a shareholder in the village, and therefore cannot be sued in a summary suit; second, defendant as plaintiff in the summary suit filed only one statement of demand, including his claim for rent against each of them, whereas they cultivated different and distinct portions of land, and he should have made separate demands; third, Kasim Ali was in prison and therefore could not have cultivated any land; and fourth, the produce of the lands of Mullick Panchoo and Wahid Ali was divided by an omlah on the part of all the sharers. To which defendant replied that Mullick Panchoo held but a small share (twentieth part of one anna) farmed to another party; that all the plaintiffs cultivate lands together; that Kasim Ali's father (Mullick Panchoo) took care of the lands when his son was in jail; and that he purchased 15 dams 10 cowries share from Roshun Ali, and is *ijarahdar* and *dur ijarahdar* of other lands on the part of Syed Rohut Ali and others, making a total of 9 annas 2 dams in his possession.

The moonsiff decided that from the evidence of witnesses and facts of the case it was clear the plaintiffs, Mullick Panchoo and Wahid Ali, cultivated separately, and that Kasim Ali had no concern with their lands, and as the latter was in prison from the end of 1251 to end of 1253, he could not have cultivated any lands at all; and as he denied giving the *dur ijarah* to defendant, who had at the same time failed to establish his claim thereto, and the dispute appeared to be entirely about this *dur ijarah*, a regular suit was necessary to adjust it; moreover, as Mullick Panchoo was a shareholder in the village, he could not be sued for rent: he therefore reversed the order given by the deputy collector in the summary suit.

In appeal, it is urged that appellant sued Kasim Ali as a ryot and not as farmer, the same arguments as above noted being repeated.

On this appeal being argued, the appellant's vakeel produced several documents to establish his claim as *dur ijarahdar* and purchaser of the property in question, and which he declares has been filed in the summary suit. These documents are mutilated and in other respects most unsatisfactory and insufficient, and therefore cannot in any way support the claim set up. I agree with the moonsiff, before whom also these documents were placed with the record of the summary suit, that the claim of (defendant) appellant is not established, that the plaintiffs Mullick Panchoo and Wahid Ali cultivated lands separately, and that Kasim Ali had no concern with them, and therefore that the order in the summary

suit must be reversed. I therefore dismiss the appeal, and confirm the order of the lower court: the appellant to pay all costs.

THE 13TH JUNE 1850.

No. 157 of 1848.

Appeal from a decision of Syed Mohummud Ali Ashruff, Moonsiff of Behar, dated 16th July 1848.

Shah Irshad Ali, Shah Burkut Ali, Shah Bakhir Ali, Shah Kasim Ali, Shah Fukkeer Ali, Shah Muksood Ali, Shah Yusuf Ali, Shah Mosahib Ali, Shah Khoda Buksh, Shah Ramzan Ali, and Shah Allah Buksh, Claimants, (Appellants in suit of Syed Mahudee Ali Khan,) and Syed Kasim Ali Khan and Syud Lootf Ali Khan, Plaintiffs, Respondents,

versus

Shah Ameer Ali, mookhtear of Musst. Beebee Jehan, wife of Shah Pyghumber Buksh, and heiress of Hosein Buksh, deceased, and Shukrun, wife of Shah Muheebullah, and heiress of Tubaruk Hosein, deceased, sellers, and Rewak Singh, Obhye Singh, and Wuzeer Singh, purchasers, Defendants.

THIS suit was instituted on the 4th August 1847, to obtain possession of 2 annas, 7 cowries, and 12 bowrees portion of mouzah Jellalpoore, pergunnah Nurhut, in right of pre-emption, and to cancel the deed of sale of the same. Suit laid at rupees 60-14-6, three times the amount of sudder jumma.

The plaintiffs in this suit urged that they were proprietors of 5 annas, 6 dams, 13 cowrees of the village in question and that the defendants, sellers, were in possession of the portion claimed, whilst the remainder belonged to other parties, the whole village being held in joint tenancy: that the sellers had sold their share to the other defendants, who were strangers, unknown to the plaintiffs, for rupees 168, on the 3rd June 1847, and on the circumstance coming to their knowledge, they claimed the same in right of pre-emption.

The purchasers, in reply, denied that plaintiffs had any share in the village, that on the estate being settled, in 1840, with Shah Imdad Ali and others, they never petitioned to be included among the proprietors, and therefore had no right of pre-emption on the portion of the property in question, which was sold to them (defendants) two months and fourteen days before the date of institution of this suit. In a subsequent petition, however, these parties stated that they had adjusted the matter with the plaintiffs, the purchasers retaining possession of half of the share in dispute, whilst the plaintiffs were to get the other half on payment within one month of half the amount of purchase money.

The claimants opposed the title of the plaintiffs altogether, and denied their having any share in the village; at the same time, however, they advanced no claims to the share in question. The defendants, sellers, gave no reply.

The moonsiff decreed the case in favor of the plaintiffs, declaring them entitled to half the share contested, and the purchasers to retain the other half; but at the same time remarked that the plaintiffs' statement with respect to the share held by them, viz., 5 as., 6 ds., 13 cs. was established, and that the claimants had failed to disprove their title.

The appellants urge that they were ignorant of any call for proof on their part to refute the statement of the plaintiffs (respondents) that the purchaser colluded with the plaintiffs, and that the decision of the moonsiff, declaring them entitled to 5 as., 6 d., 13 c., in the property, will materially affect and injure their (appellants') rights and interests in the estate hereafter, if allowed to remain unquestioned: they therefore appeal against that portion of the moonsiff's decree.

Though from perusal of the record I am not satisfied that the plaintiffs in any way established their right of pre-emption, whilst the fact of the purchasers having once denied the plaintiffs' title to any share in the estate, and subsequently representing their adjustment of the disputed claim, strongly indicates the existence of a collusion between the parties, yet as the (claimants) appellants do not appeal against the sale of the disputed share, I am precluded from interfering with the decision of the moonsiff on that point: before however declaring the plaintiffs entitled to the share claimed by them in the estate, which it was unnecessary to insert in the decree, I am of opinion that the moonsiff should have required ample proof from the plaintiffs in support of their claim, instead of throwing the whole *onus probandi* on the claimants. This does not appear to have been done sufficiently, and therefore this portion of the decree of the lower court may hereafter prove injurious to the rights and interests of the appellants. I confirm the moonsiff's decree, as no appeal was preferred against that portion which relates to the sale of the share in question, and dismiss the appeal. This decision, however, will not bar the appellants' right to sue hereafter by a regular suit for any share or shares they may claim in the estate. The appellants to pay the costs of this appeal.

THE 13TH JUNE 1850.

No. 200 of 1848.

Appeal from a decision of Sheikh Kasim Ali, former Additional Moonsiff of Gyah, dated 13th September 1848.

Rambeharee Singh, (Plaintiff,) Appellant,

versus

Musst. Imahee Jan, wife of Fuzul Imam, debtor, Musst. Ikramoonnissa, mother, and Hufcezoonnissa, sister of said Fuzul Imam, and Sheikh Fuzul Hosein, objector, son-in-law of Fuzul Imam, and after demise of Ikramoonnissa, Musst. Hufcezoonnissa, her daughter, (Defendants,) Respondents.

THIS suit was instituted on the 30th December 1845, to reverse the sale of mouzahs Bazetpore Kurwah and Bhadassee Budyooden, and amend a miscellaneous order of the principal sudder ameen of Behar, dated 30th November 1844. Suit laid at rupees 244-4-6.

The plaintiff asserts that Fuzul Imam borrowed the sum of Sicca rupees 200, and gave him a bond, dated 4th October 1841, or 4th Assin Sance 1249 F., pledging as security the above villages; that on the amount not being paid, he sued the defendant, and obtained a decree, the defendant admitting the debt; after his death plaintiff petitioned for the sale of the above villages in satisfaction of his decree, but Sheikh Fuzul Hosein interposed, at the instigation of the heirs of the deceased, and produced a deed of sale, bearing date 25th Assin 1250 F., which the principal sudder ameen pronounced to be a valid document, and thereon, under date the 30th November 1844, released the property. Plaintiff argues that his bond bears date antecedent to the said deed of sale by more than a year; that in his bond it was stipulated that the property should not be sold till the debt was liquidated, and the deed of sale had not been registered: moreover, that, during the whole of the month of Assin, on the 25th day of which 1250 F., the deed of sale is declared to have been executed at *Bhadasee*, the deceased was in Patna, to prove which he has another decree, dated 20th February 1844, on a bond executed by the said deceased in Patna on the 24th Assin of that year (1250,) therefore that the deed of sale has been fabricated.

Sheikh Fuzul Hosein maintains that his deed of sale is a valid document, that the property was sold to him to enable the deceased to meet the claims of Ashgur Hosein, to whom the villages had been farmed on the 19th Aughun 1244 F., and that he paid rupees 1000 for the same.

Mussts. Ikramoonnissa and Hufcezoonnissa, in reply, support the statement of Sheikh Fuzul Hosein.

The moonsiff considered the sale of the property to Sheikh Fuzul Hosein, and the payment by him of 900 rupees to Ashgur Hosein, being the amount due as per *ijaranamah*, and possession by the said

Sheikh Fuzul Hosein from the date of purchase, clearly established by the evidence of witnesses produced before him as well as before the principal sudder ameen, and therefore dismissed the plaintiff's claim.

In appeal, no new plea of consequence has been advanced.

On perusal of the record it appears that Ashgur Hosein and Ahmud Hosein his brother, both deposed before the moonsiff to the original ijaranamah having been returned on Sheikh Fuzul Hosein, paying the former the balance 900 rupees, due to him; no doubt therefore remains as to the fact of the estate having been farmed to Ashgur Hosein by the deceased. The plaintiff in support of his claim filed a copy of a decree by the moonsiff of Patna under date 5th January 1843, in which the bond, forming the groundwork of that suit, is declared to bear date the 4th October 1841, the amount being 200 rupees, and the defendant, Syed Fuzul Imam, to have confessed judgment, and given as security his share in mouzahs Muhyodeen Abdul and Kuranto Buzoorg or Shama Chuck, pergunnah Mussora, in zillah Patna. It appears very odd and unusual that two bonds for the same amount respectively should have been executed by the same party on the same date and year. Appellant's vakeel endeavours to explain this in a very unsatisfactory manner, and declares the bonds to have been distinct; he has, however, failed to produce the bond in question in three instances, viz., in the original suit in which the defendant Fuzul Imam is said to have admitted the debt; secondly, when he applied for the execution of that decree, and Sheikh Fuzul Hosein interposed, and in which case I conceive he would have filed it had it been in existence; and lastly, in the present suit. I am therefore of opinion that the bond cited in this suit and that noted in the decree of the moonsiff of Patna being of the same date and for the same amount, are one and the same, and as the former document has never been produced in court and the villages in question were not pledged as security in the latter deed, the petition for the sale of them in satisfaction of plaintiff's claim was very properly rejected, and the deed of sale of the property to Sheikh Fuzul Hosein upheld: moreover, appellant has not filed any copy of the decree said to have been obtained by him on the bond in question.

I therefore dismiss the appeal with costs, without notice to the respondents, and confirm the decision of the lower court.

THE 21ST JUNE 1850.

No. 215 of 1848.

*Appeal from a decision of Moulvee Syed Mohummud Furreedooddeen,
Moonsiff of Jehanabad, dated 20th November 1848.*

Byjnath Singh and Noteenath Singh, sons and heirs of Zalim Singh,
deceased, (Defendants,) Appellants,

• *versus*

Neeroo Sahoo, (Plaintiff,) Respondent.

THIS suit was instituted on the 8th March 1848, to recover rupees 23-4, principal and interest, on a bond, dated 16th Kartikh 1254 F.

The plaintiff states that the bond in question for rupees 20-1 was executed by Zalim Singh, deceased, on the above date, partly for balance of account on previous transactions and partly for an advance of money made, and that he stipulated to repay the amount in paddy, giving 5 seers in the rupee in excess of the first market price of the season, and verbally fixed the end of Poos 1254 F. for that purpose: that Zalim Singh died in Bhadoon, and though the money has been frequently demanded, the defendants will neither pay in cash nor grain.

The defendants deny the debt, and disallow the execution of the bond by their father, during whose lifetime, had it been a correct document, the plaintiff should have sued for payment; they further state that on the 1st Kartikh 1254 F. they had occasion to pawn certain silver ornaments valued at rupees 120, with the plaintiff, for rupees 60, and on their going to redeem them after their father's death the plaintiff refused to restore them, and their intention to file a suit against him for their recovery becoming known to the plaintiff, he instituted the present one, at the instigation of one Muhecut Singh, to deprive them of their rights.

The moonsiff observes that the witnesses of the bond fully established its correctness and the claim of the plaintiff founded thereon, though, by an oversight at the time of the execution of the deed, the date on which the debt was to be liquidated was omitted; the fact, however, of Zalim Singh having promised to discharge the amount in Poos 1254 F., was attested by witnesses, and therefore the denial of the defendants is of no consequence: the claim of the plaintiff was accordingly decreed.

In appeal, it is urged that the statements of the witnesses varied, that the writer of the deed had not been required to give evidence, and the bond itself was not registered.

I do not consider these objections of any moment, for the evidence of the witnesses clearly proves the payment of the money to have been demanded by the plaintiff, and the bond to have been duly executed by the deceased. Only one discrepancy of any consequence

in the evidence of the witnesses to the deed is discernible, viz., one declares the writing to be in Hindec, and the other in Persian. The document is written in the former character, and though the latter witness appears from the record to have taken the bond in his hand, and recognised his own signature thereon, yet he asserts the body of the document to be written in the latter character. Either this was a mistake of the person writing down the evidence, as with the document before him it can scarcely be supposed the witness, able to read and write, would commit such a mistake; or else, as the moonsiff remarks, the witness, being the purrohit of the defendants, adopted this as his only means of favoring them, and throwing discredit on the bond. At any rate I do not consider it sufficient to invalidate the plaintiff's claim, in all other respects clearly established, and therefore dismiss the appeal, with costs, without notice to the respondent, and confirm the order of the lower court.

THE 21ST JUNE 1850.

No. 216 of 1848.

Appeal from a decision of Sheikh Kasim Ali, former Additional Moonsiff of Gyah, dated the 27th November 1848.

Musst. Sookwureah *alias* Kylee, and Musst. Pooncah, her security, Defendants, Appellants in case of Muncer Sahoo, Plaintiffs, Respondents,

versus

Appellants and Durshun Kuhar, Opponents, Defendants.

THIS suit was instituted on the 5th June 1848, to recover rupees 12-8, principal and interest, on a bond dated 5th Bhadoon 1250 F.

The plaintiff states that he had to receive rupees 7-8 from Musst. Sookwureah, on accounts of some previous years being adjusted, and that she gave the bond in question, stipulating to pay the same with interest in Jyte 1252 F., and that she would remain in his service; further that Musst. Pooncah stood security for the payment of the debt; that the amount remained unpaid, and in 1254 F., defendant ran away and took up her residence in Khukundeha, and on plaintiff demanding his money, opponent interposed.

Musst. Sookwureah denies the debt, and declares the bond to be forged, in order to force her back into the plaintiff's service, which she left in consequence of not receiving her wages of eight annas per mensem, which plaintiff never paid willingly, and, on his refusal, to give her dues, amounting to 12 rupees, she ran away.

Durshun Kuhar denies having interposed, and declares the other defendants not indebted to plaintiff.

The moonsiff, considering the claim proved and the fact of Musst. Pooncah's standing security established, decreed the suit in favor of the plaintiff against the two defendants, but exempted Durshun Kuhar, as no proof of opposition had been adduced.

In appeal, it is urged that the wording of the document is altogether wrong and contrary to custom and the tenor of such documents generally, inasmuch as it specifies conditions usually inserted in *ijaralnamahs* and *ikrarnamahs*, and therefore opposed to the terms of a bond; consequently that the deed is invalid, and, as the object of the plaintiff was to make her serve as a slave, contrary to the regulations of Government, cannot be enforced against her.

I have examined this bond, and find the appellant, Musst. Sook-wureah, agreed to pay rupees*7-8, with interest in Jyte 1252 F.; that she would continue in service if not paid, and receive, instead of a monthly remuneration, her food daily and two suits of clothes annually from the respondent for her services. The insertion of these clauses or conditions does not, I conceive, deprive the respondent of his right to claim the amount, which is proved to be due to him, nor is there any thing in the bond to denote slavery; whilst the appellant having failed to substantiate her plea of non-payment of wages by the respondent, and having quitted his service contrary to her own agreement, I am of opinion that she is amenable for the debt, and, in the event of her not paying the same, that the other appellant, Musst. Pooncah, is responsible. I therefore dismiss the appeal, with costs, without notice to respondent, and confirm the order of the lower court.

THE 22RD JUNE 1850.

No. 187 of 1848.

Appeal from a decision of Sheikh Kasim Ali, former Additional Moonsiff of Gyah, dated the 30th August 1848.

Sheosunker Misser, (Plaintiff,) Appellant,

versus

Deelchund Misser, Rampershen Misser, Khooshee Misser, Kherodhur Misser, and Bydenath Misser, (Defendants,) Respondents.
Rohunnee Misser, Objector.

THIS suit was instituted on the 18th January 1848, to obtain possession of 1 biswa 5 dhoors of land, more or less, in mouzah Missurbegha, pergunnah Sunowut, by breaking up a chubootra and removing two earthen pans fixed therein, and to shut up a new pathway near the plaintiff's house, valued at rupees 30, and to recover 2 rupees damages, on account of a wall removed by defendants; total value 32 rupees.

The plaintiff states that he has two houses, one used as a zenana, and the other for other purposes; that defendants had always access to their houses by a road past his sudder or principal entrance; but that from Kartikh 1253 F., they have obstructed his road and injured his property, by removing a wall and chubootra, and making a new pathway over the site, and by building another chubootra

opposite one of his houses, and fixing therein pans for feeding cattle: he therefore sues for the removal of the obstructions, remuneration for damage sustained, and possession of the land from which he has been ousted by defendants.

The defendants deny the claim *in toto*, and declare the wall in question to have fallen down during the rainy season several years ago, that they have made no new road, nor has any new chubootra been built; that the way of ingress and egress is the same as formerly, and the chubootra, and pans fixed therein, built many years ago; they also plead that plaintiff is a 2 annas shareholder in the village, whilst they and Rohunnee Misser have 1 anna each; and as Rohunnee Misser exchanged $2\frac{1}{2}$ biswas, on which his zenana house stood, for the same quantity of land in defendant's share of the village, they are entitled to 5 biswas, out of 10, on which the houses of all parties are built, and that the land in question belongs to them and plaintiff jointly.

Rohunnee Misser supports the plaintiff's statement, but states that, of his share in the property on which his house stood, viz., $2\frac{1}{2}$ biswas, half belonged previously by right of inheritance to plaintiff, whilst the other half was made over to Deel Chund Misser, in exchange for other land.

The moonsiff says, the plaintiff, on the 18th July 1848, agreed to abide by the evidence on oath of three witnesses cited by the defendants; and as two of them had attended at the court and sworn to the land in dispute belonging jointly to plaintiff and defendants, the plaintiff's claim was incorrect, and the objector's statement in its support unworthy of credit, and therefore dismissed the case.

In appeal, it is urged that the moonsiff's decision is opposed to the evidence given by the witnesses of defendants.

The respondents reply that the appellant's claim is inadmissible for two reasons. First, that the boundaries of the land claimed are not specified, as required by the order passed by the Sudder Court on the 28th March 1848, in the case of Ooman Dutt and Gowree Dutt *versus* Ramsahaie Singh and others; and second, that appellant has not stated the time when the cause of action arose, as required by Section 17, Regulation XXIII. 1814.

The respondents' objections are, in my opinion, invalid, as the claim of the appellant is for a portion of land situated within certain defined limits, occupied by houses, and therefore boundaries cannot be clearly specified, and as the suit has been brought in reality for the removal of obstructions, the restoration of the property to its former condition, and to protect the appellant from injury and loss hereafter, the specification of boundaries is not needed: whilst the appellant having in his original plaint stated the cause of action to have arisen in the month of Kartikh 1255 F. the respondents' second objection is disposed of. On perusal of the evidence of the witnesses noticed by the moonsiff, it appears that they distinctly

declared the portion of ground, on which the new chubootra had been built and pans fixed and a new door opened by the defendants, exclusively to belong to the plaintiff, and that the defendants had no title or share therein. There can be no doubt therefore that the moonsiff's decision is wrong and contrary to evidence. I therefore reverse the order of the lower court, and decree the appeal for the amount claimed: respondents to pay all costs of both courts.

THE 22RD JUNE 1850.

No. 206 of 1848.

Appeal from a decision of Sheikh Kasim Ali, former Additional Moonsiff of Gyah, dated 19th September 1848.

Bhujjun Bhuggut, (Plaintiff,) Appellant,

versus

Oodwunt Bhuggut, auction purchaser, Jhooree Bhuggut, and Bassoo Bhuggut, sons of Rummun Bhuggut, mortgager, (Defendants,) Respondents.

THIS suit was instituted on the 26th February 1848, to recover Company's rupees 195-5, principal and interest on account of loan, covered by a deed of mortgage, alleged to have been executed under date 15th July 1842.

The plaintiff asserts that Rummun Bhuggut borrowed from him rupees 140, stipulating to repay the same in the end of Sawun 1250 F., and mortgaged as security three houses which he had purchased; that these premises were afterwards sold in satisfaction of a decree held by Musst. Akloo, and purchased for 200 rupees by Oodwunt Bhuggut on the 29th November 1844, and plaintiff dispossessed. The plaintiff considers himself entitled to claim the amount of the loan from the auction purchaser, under the rules laid down in Circular Orders of 4th September 1840, and 10th June 1842: he also sues the other defendants in consequence of their being the heirs of the mortgager deceased.

Oodwunt Bhuggut, in answer, declares the deed produced by the plaintiff to be fabricated; that the property in question was purchased by Lukput Rai, on the 22nd July 1840, at an auction sale, in satisfaction of a decree held by Musst. Mundwa Koower against the owner Durriao Hulwai, and as Lukput Rai did not sell the houses to Rummun Bhuggut till the 21st Kartikh 1250, or 9th November 1842, as proved by copy of the deed of sale filed, the latter had no power to mortgage the property on the 15th July of that year, *i. e.*, more than three months before the date of his purchase.

The other defendants declare their father to have died leaving no property, and as the houses were bought by Lukput Rai, for their father, and mortgaged to the plaintiff for rupees 140, the auction purchaser must pay the amount.

The moonsiff dismissed the claim as not established, and on the grounds that the plaintiff, being a relative of the deceased mortgager, had colluded with Lukput Rai in the institution of the suit.

In appeal, nothing of any consequence, beyond what is stated in the plaint, has been urged, except that, previous to the property being purchased by Oodwunt Bhuggut, on the 29th November 1844, appellant petitioned the court relative to his mortgage on the property, and therefore defendant was cognizant of the existence of the deed.

The respondents have attended by vakeel voluntarily.

The claim of the appellant rests entirely on the validity of the deed of mortgage. It has been argued that the houses in question were bought by Lukput Rai, for Rummun Bhuggut, *i. e.*, benamee, in 1840, but of this there is no proof, save the declaration of Lukput Rai himself, which is worth nothing; and as that person in his deed of sale to Rummun Bhuggut, dated 9th November 1842, styles himself sole proprietor and occupant at the time being, the plea of purchase for another party cannot be allowed. I am therefore of opinion that the claim founded on this deed of mortgage is not established. That the document was in existence in 1844, is proved by an order of the principal sudder ameen, dated 31st August of that year, in the case of execution of the decree held by Musst. Akloo, but its validity or genuineness was never enquired into. I therefore dismiss the appeal, and confirm the order of the lower court.

THE 26TH JUNE 1850.

No. 221 of 1848.

Appeal from a decision of Syed Mohummud Ali Ashruff, Moonsiff of Behar, dated 21st November 1848.

Baboo Pershun Chund, (Plaintiff,) Appellant,

versus

Duleep Rai, Toodul Rai and Hookum Rai, (Defendants,) Respondents.

THIS suit instituted on the 26th February 1848, to recover Company's rupees 75-8-5, *minus* 2 rupees paid, on account of revenue due for lands cultivated by defendants in mouzah Fukherpore, Itakadpore, pergunnah Sumai.

The plaintiff states that defendants, in 1254 F., cultivated together 25 beegahs and 1 biswah of land, for which rent was to be paid in cash, according to the custom prevailing in the village, and for which distinct pottahs had been given according to the situation and description of the lands; that his putwaree's accounts showed Sicca rupees 72-13-3-4, to be the full demand against defendants, but of which only 2 rupees had been realized; he therefore sued for the balance.

Duleep Rai denies the claim *in toto*, whilst Hookum Rai declares his cultivation to be distinct from that of the other defendants, and that he has paid up all demands against him for 1254 and 1255 E.

Toodul Rai admits that he has cultivated 25 beegahs in the above village since 1250 F., but denies that his rents were to be paid in cash, urging that, when the estate was let in farm to Durjun Singh and Komul Singh, he agreed to a division of the crops, giving a half share of the same to the farmers as rent of the land; and that when the lease of the farm expired, in the end of 1253 F., and plaintiff kept it under his own management, certain crops in the succeeding year were to be divided with him; but in consequence of plaintiff's neglecting to depute a person to superintend the division and receive his share of the khureef harvest crops, defendant applied to the foudaree court, and the parties were directed to bring their claims before the civil court, on the grounds that the sole dispute related to the justness or otherwise of a cash payment demand, though at the time the police darogah had reported the defendants' statement to be correct: that, moreover, most of his crops had been destroyed by the plaintiffs' refusal to come to terms, and that what remained of the khureef harvest was attached by order of the civil court, and sold in satisfaction of a decree of plaintiff.

The moonsiff, considering the evidence of the witnesses of the plaintiff contradictory, and unsatisfactory, and that the farmers used to receive a half share of the crops of the lands in lieu of rent, and therefore that the plaintiff had no right to enhance the rents, or introduce a new system without due notice, as enjoined by Regulation V. 1812, dismissed the suit.

In appeal, it is urged that the putwarce's accounts sufficiently prove the justness of the claim, and that the farmers had no power to disturb or annul the former pottah under which the defendants held their lands.

Though the appellant in this suit failed to produce before the lower court the kuboolcut, or agreement of the defendants, yet he filed a copy of a decree, passed by this very moonsiff, dated 25th December 1834, in a suit between these same parties, in which Toodul Singh admitted paying his rents for certain lands in cash, but of which the moonsiff takes not the slightest notice in his present decision, though that document clearly proved the incorrectness of the defendants' statement. Under these circumstances, and as the defendants should have produced their pottahs to establish their rights as set forth by them, and considering the moonsiff's investigation incomplete, as to the amount of rent demandable by the appellant, I reverse the decision of the lower court, and remand the suit for re-trial and decision, after full, and, if necessary, local enquiry. The value of stamp of appeal to be refunded.

THE 28TH JUNE 1850.

No. 155 of 1848.

Appeal from a decision of Moulvee Mohummud Abdool Luteef, former Acting Moonsiff of Jehanabad, dated 6th July 1848.

Musst. Wuheedun, Appellant in the suit of Musst. Jeechoo, for self, and as guardian of Musst. Buttoolun, her daughter, a minor, Plaintiff, Respondent,

versus

Appellant, the wife of, and Musst. Ammun and Summun, daughters of, Mobaruk Ali, deceased, and Musst. Wajun, wife of Mullick Gujraj, Defendants.

THIS suit was instituted on the 9th June 1847, to obtain possession of 1 anna 18 dams share out of 8 annas of mouzali Khajihpore Dowlut, pergunnah Ekil, and to recover wasilat from 1252 F. to the khurreef crop of 1254 F., valued at rupees 236-8-1-14.

The plaintiff states that Mobaruk Ali had two wives, herself and Wuheedun defendant, that he had one daughter, Buttoolun, by the plaintiff, and one son, Mullick Dumree, and two daughters, Ammun and Summun, by Wuheedun; that he died leaving 8 annas of the property above described, of which half an anna, or 10 dams came to each wife, 2 annas, 16 dams to Mullick Dumree, and 1 anna, 8 dams, to each daughter; that in 1252 F., Wuheedun, defendant, gave her a portion of the produce of the estate, but refused the remainder of her right as well as papers; hence the suit. Musst. Wajun is made defendant also in consequence of her being the proprietor of the other 8 annas of the estate, but against her, the plaintiff admits, she has no claim.

Musst. Wuheedun, defendant, replies and urges that

1st. Plaintiff is not Mobaruk Ali's wife.

2nd. Besides the property concerned in this suit, other property was left by deceased, of which defendant is in possession as her marriage portion; therefore the plaintiff's claim for a portion of the estate is opposed to the Circular Order of the Sudder Court, dated 11th January 1839.

3rd. After Mobaruk Ali's death, defendant took out execution of a decree obtained by the deceased, whom she in that case represented as heir, and on the usual proclamation being issued the plaintiff offered no objections.

4th. After obtaining possession of the entire estate, after Mobaruk Ali's death, she sold half to Musst. Rasoo, and that the plaintiff offered no objections on the issue of the proclamation from the collector's office, relative to the registry of the name of the said purchaser.

5th. Defendant was sued for a debt of rupees 2801-1-4, by Wahid Ali and others, according to a kistbundee of the deceased,

and in which suit plaintiff would have been included had she been deceased's wife.

Musst. Ammun replies that she is of age and Wuheedun not her guardian, and that plaintiff is not Mobaruk Ali's wife.

The moonsiff in this case called for futwas from the moulvees of Behar and Tirhoot, who both declared the marriage of the plaintiff with Mobaruk Ali proved by the evidence of the witnesses produced, and the fact of Mustt. Buttoolun being his daughter established, and thereon gave a decree in favor of the plaintiff.

In appeal, it is urged that the witnesses of the plaintiff gave contradictory evidence, and therefore neither the marriage nor fact of Buttoolun being the daughter of the deceased are proved, that neither the vakeel nor cazec, said to have been present on the occasion of the marriage, and who were residents of a distant part of the country, were summoned to give evidence, and that plaintiff's claim to obtain possession of any portion of the property could not be entertained, until she had established the fact of her marriage.

Respondent advances nothing of importance beyond that stated in the plaint, and declares her claim and marriage proved.

Of the witnesses of the plaintiff, two to a certain extent prove the marriage and the birth of Mustt. Buttoolun after that marriage with the deceased; but I do not consider their evidence at all satisfactory, for the following reasons:—It appears Mobaruk Ali died in 1251 F., 22nd Bysakh, or 25th April 1844; that on the 29th June 1844, appellant obtained a decree in this court as heir of the deceased; that on the 29th December 1845, or 16th Pooos 1253 F., she sold half of the estate of deceased to Mustt. Rasoo, whose name was registered in the collector's office, on the 30th March 1846; and again on 7th May of the same year obtained another decree declaring her heir of the deceased, in no one of which cases does the respondent appear to have advanced any claim to a share in the property as wife of the deceased; moreover, in her plaint she omits all mention of the date of her marriage and what dowry was then given her, whilst the most respectable of her witnesses declare their ignorance of her marriage, though well acquainted with deceased and his affairs; further, the evidence of the witnesses of the appellant shows the respondent to have been a woman of low caste, performing menial services at the houses of various persons, and therefore a most unlikely person for the deceased to have contracted a second marriage (nikha) with. Under all these circumstances, I consider the claim of the respondent not established, and that, had she actually been married to Mobaruk Ali, she never would have remained silent on appellants' suing for possession of the estate after his death, and disposing of a moiety thereof to Mustt. Rasoo, without her consent; and lastly, to the registry of appellants' and the purchasers' names in the collector's office without urging her claims: moreover, it appears from the copy of the deed of sale to Mustt. Rasoo, that that

transaction took place long after Mobaruk Ali's demise, and therefore, from respondent's statement that he died possessed of only 8 annas of the estate, there is good ground to consider her claim altogether false. The reason assigned for requiring futwas from the moultvees of Behar and Tirhoot is that the former officer was declared by the appellant to entertain an inimical feeling towards her and her late husband; but I consider neither of their opinions of any importance, as they are evidently founded solely on the evidence of two witnesses of the plaintiff. I therefore reverse the order of the lower court, and decree the appeal, with costs in both courts against the respondent.

THE 28TH JUNE 1850.

No. 156 of 1848.

Appeal from a decision of Moulvee Mohummud Abdool Luteef, former Acting Moonsiff of Jehanabad, dated 6th July 1848.

Musst. Ammun, for self, and sister and brother, Defendants in suit
No. 155, Appellant,

versus

Musst. Jeechoo, (Plaintiff,) Respondent.

CLAIM, to obtain possession of 1 anna 18 dams share of 8 annas of mouzah Khajehpore Dowlut, pergunnah Ekil, instituted 9th June 1847.

As this appeal is connected with that in suit No. 155, this day decided, and the reasons given in that decree are also applicable to this case, I decree this appeal also, and reverse the order of the lower court, with costs.

THE 28TH JUNE 1850.

No. 205 of 1848.

Appeal from a decision of Syed Tuffuzzool Hosein, Moonsiff of Gyah, dated 25th August 1848.

Ramjewun Singh, one of the Defendants, Appellant, in case of Ram-
lall, Plaintiff, Respondent,

versus

Appellant and Munnoolall, his son, Defendants.

THIS suit was instituted on the 8th February 1847, to recover Company's rupees 141-5-4, principal and interest, on account of malgoozaree of 2 annas share of mouzah Mitherpore and 5 dams of two annas of Doulutpore, pergunnah Kabur.

The plaintiff states that the half of mouzah Mitherpore is settled at a jumma of rupees 80, and the two annas of Doulutpore at rupees 5-8, making a total of rupees 85-8, that in the former a one anna

share belonged to Chundun Singh, one anna to Manik Chund and Doodhur Singh and Jeetun Dass, his nephews, 13 dams 1 cowree to Kunhya Lall and Nundram, and the balance 5 annas, 6 dams, and 2 cowrees, together with 19 dams of the two annas of Doulutpore, and 1 anna 12 dams of the half of Kustooree Khass belonged to plaintiff; that Chundun Singh, in consequence of the death of Manik Chund and continued absence of Doodhur Singh and Jeetun Dass, mortgaged the said two annas on an advance of rupees 121-8, to Deonarain Singh and Bishen Singh for nine years in Maugh 1208 F.; that these mortgagees re-mortgaged the property to plaintiff in Phalagoon 1216 F. for the same amount, and for the remainder of their lease; but in consequence of the non-payment of the advance the property remained in his possession till 1228 F.; that in 1229 F., after Chundun Singh's death, the defendant, Munoolall, in the absence of his father, Ramjeewun Singh took upon himself the debt and borrowed a further sum of rupees 19-8, making a total of rupees 161, for which the property was again mortgaged; that in the end of 1234 F., Munoolall petitioned the court for possession, and paid up the amount borrowed; that from the 20th October 1830, or Kartikh 1238 F., when he obtained possession, up to the 12th February 1835, he had failed to pay his share of Government revenue, both for the two annas in Mitherpore and 5 dams of Doulutpore, the annual demand for which amounted to Sicca rupees 20-11, in consequence of which, and other shareholders falling in balance, the entire estate, comprising half of Mitherpore, 2 annas of Doulutpore, and half of Kustooree Khass, was sold; but that plaintiff on the following day paid up the balance due, amounting to rupees 282-15-11, together with rupees 10-1-6, on account of the Maugh kist of 1242 F., and had the sale reversed on the 14th August 1835; that other shareholders have repaid him their shares of the above, but in consequence of the defendants' refusing to liquidate their portion, Sicca rupees 66-4-1, he is compelled to sue them; and further states that for rupees 7-8, due by Mokundram, he intends filing a separate suit.

Ramjeewun Singh pleads that plaintiff is not proprietor of the estate, which is a joint and undivided one, and therefore the plaint should have included all shareholders, as required by Circular Order of the Sudder Court, dated the 11th January 1839; that it is not stated for what years the money was paid, and that the money was collected by a putwaree on the part of all sharers, and, though paid through the plaintiff, was not money advanced by him, and therefore the suit is brought only with the view of obtaining wasilat during the time the property was mortgaged from 1208 to 1233 F.

Munoolall answers to the same effect.

The moonsiff, considering the claim proved by the documents by the plaintiff, and that the defendants had failed to establish their statement, decreed the suit in favor of plaintiff against Ramjeewun

Singh only, and exempted his son from all responsibility, on the score of his non-liability for the debt during the lifetime of his father; the moonsiff also remarked that the plaintiff's claim of rupees 7-8 against Mokund Ram, for revenue of lands in Kustoorec Khass, had been settled by razeenamah. Against this decision defendant appeals, urging that the facts of the case did not receive due consideration from the moonsiff, and that, if any revenue had been due by him, it would have amounted to only rupees 37-8-2, from kist Assar 1240 F. to kist Maugh 1242 F.

The respondent attended without notice.

The appellant has failed to prove the payment of the revenue due on his share in the estate, either by himself or through the putwarec, who is dead; and as he has in a similar manner failed to establish the point of an unjust demand being made from him, and not satisfied the court in explaining his reasons for calculating his liabilities from the Assar kist of 1240 F., I consider his appeal unsupported by any arguments or pleas of moment. It has been urged that the plaintiffs' claims, by not including the balances of all shareholders, is opposed to Circular Order of the Sudder Court, dated 30th September 1847, and having mortgaged his share of the property in Mitherpore and Doulutpore in 1235, to Meer Abdoollah and others, the plaintiff had no interest in the estate, and therefore could not have made the payments alleged on account of appellant's share. In reply to these objections the respondent states that, having no claims against other sharers in the villages in question, there was no necessity for him to include their portions of the balance in the plaint, and that after he and Jyemungul Singh had mortgaged their shares as above stated, he took them in farm from the mortgagees, and therefore did make the payments of the revenue of those shares as well as for appellant's share; moreover, from a copy of a petition presented to the collector shortly before the sale above noticed, it appears that appellant's son admitted a balance being due and stated his readiness to pay the same, the amount not being mentioned, but as his name was not borne on the register, as a proprietor, he refused to pay; it is therefore clear that a balance of revenue was due from appellant, and as the documents filed by the plaintiff prove the arrears of rent, for which the property was sold, to have been paid by him, there can be no doubt of the justness of the claim now preferred; of which the following is a detailed account, viz.:

	Sa.	Rs.	As.	P.
Balance of revenue for 1239 F.,		1	4	6
Interest charged by Government,		0	12	13
				2 0 19
Revenue for 1240 F.,	41	6	0	
Interest charged by Government,	10	0	7	
				51 6 7

	Sa. Rs.	As.	P.
Revenue of 7 kists of 1242 F.,	9	1	5
Interest charged by Government,	3	11	10
	<hr/>		
		12	12 15
Total, Sicca rupees,	66	4	1
or ditto, Company's rupees,	70	10	8
Interest from 13th February 1835,.....	70	10	8
	<hr/>		
Total, Company's rupees,	141	5	4

to which I consider the respondent's claim established, and therefore dismiss the appeal, and confirm the order of the lower court, with costs.

THE 29TH JUNE 1850.

No. 111 of 1849.

Appeal from a decision of Mohummud Ali Ashruff, Moonsiff of Behar, dated 28th April 1849.

Sheikh Daim Ali *alias* Dummoo, (Plaintiff,) Appellant,

versus

Kirtce, Jeetun, Bhuttun, and Pochah, (Defendants,) Respondents,

THIS suit was instituted on the 19th December 1848, for damages for defamation of character.

The plaintiff states that he was very grossly abused and maltreated by the defendants on Monday, the 9th Augluon 1256 F.; that he complained at the police thanna, but no notice was taken of his case, because he did not bear marks of serious maltreatment: however, as he considered himself degraded by the abuse of the defendants, and his reputation and character had suffered, he sued them for damages, laid at rupees 32.

The defendants deny the statement of the plaintiff *in toto*.

The moonsiff considered the claim not proven, because some witnesses deposed to the defendants' giving one style of abuse, whilst others declared the defendants to have indulged in language somewhat different, though equally bad, and that the claim of the plaintiff for such damages was not established: he therefore dismissed the suit, as the quarrel originated in a dispute about the settlement of an account of some bangles.

In appeal, it is declared that the witnesses proved the claim and fact of abuse and maltreatment.

The evidence of the witnesses certainly shows the defendants to have indulged in highly abusive language relative to the ancestors, fraternity, and sisterhood of the plaintiff; and though there are some slight discrepancies as to the exact language used on the occasion

by each defendant, yet it is sufficiently established that each and all joined in his maltreatment and abuse and consequent degradation. The moonsiff has omitted, notwithstanding the above evidence for the plaintiff, to require exoneratory evidence for the defence. I therefore consider the investigation incomplete, and reverse the decision of the lower court, and remand the case for re-trial. The value of stamp of appeal to be refunded in the usual manner.

THE 29TH JUNE 1850.

No. 208 of 1848.

*Appeal from a decision of Moultee Syed Mohummud Fureedooddeen,
Moonsiff of Jehanabad, dated 5th September 1848.*

Jeoraj Singh, for self and wulee of Choolun Singh, minor son of
Shamnath Singh, (Plaintiff,) Appellant,

versus

Musst. Lall Daice, Bishenlal Misser, and Besheshur Misser,
(Defendants,) Respondents.

THIS suit was instituted on the 6th January 1848, to recover possession of 14 beegahs of lakhiraj land, in mouzah Aukhoorree, pergunnah Goh, according to an ijaranamah, or farm lease, of 3rd Assin 1249 F., and to reverse an order of the sessions judge of Behar, dated 27th November 1847. Valued at rupees 71.

The plaintiff states that Bishenlal Misser and Besheshur Misser, as proprietors of shares in the village in question, gave him and Shamnath Singh a farm of 14 beegahs of land, at a jumma of 14 annas per beegah, for three years, from 1250 to 1252 F., and received rupees 71 in advance, and that the ijaranamah above cited was given on the occasion, and according to which they retained possession and paid their rents; that in 1264 F., on the 10th Aughun, these defendants cut and carried the crops of 2 beegahs of the land in question, thereby dispossessing the plaintiffs of the farm; on which account they instituted a case in the foujdaree court under Act IV. 1840, and obtained an order from the moultee, declaring them entitled to the property and to be kept in possession; against this order Musst. Lall Daice, who interposed and claimed the land as her own, appealed to the sessions court and obtained a decree, reversing the order of the moultee. To set aside this decree the plaintiffs have instituted the present case, declaring Musst. Lall Daice to have no right or interest in the lands, and that her name was registered in the collector's office improperly as proprietor of the village, and that by the sessions judge's order they were ousted from the farm from 1255 F.

Musst. Lall Daice, in reply, declares the lands in question to have belonged to the estate of her husband, and to be her property, as proved by the sessions judge's order, and that she had appealed

against a decree obtained by the plaintiffs from the officiating moonsiff of Jehanabad, under date the 13th August 1847.

The moonsiff, on the ground that the decree above noted had been reversed in appeal by the principal sudder ameen, and the lands in question declared to have belonged to Neeladhur Misser, husband of Lall Daiee, and that the other defendants had no right or interest therein, dismissed the claim.

In appeal, it is urged that Bishenlal Misser and Besheshur Misser, sons of Bunsee Misser, after the death of their father, and Neeladhur Misser, his brother, came into possession of the property and mortgaged the lands in question to various parties, thereby clearly establishing their possession, and that an appeal had been preferred against the decision of the principal sudder ameen.

The appellant has failed to produce the ijaranamah, the most essential document in this suit, whilst the witnesses have declared their ignorance of the amount alleged to have been advanced. It appears also from appellant's own showing that the farm lease extended only to 1252 F., therefore its continuation beyond that year could not be demanded, unless any specific condition to that effect was inserted in the ijaranamah, which cannot be ascertained without the production of that document. It is evident, however, that Mahanund Misser, the original owner of the property, gave mouzah Bhowancepore to his son, Bunsee, the father of Bishenlal and Besheshur, and mouzah Aukhooree, in which these 14 beegahs are situated, to his other son, Neeladhur, husband of Lall Daiee, and therefore the other defendants had no power to give the farm in question. Moreover, as all the facts of this case appear to have been duly considered in the decree of the principal sudder ameen, dated 12th June 1848, and that decision was upheld in appeal on the 18th April 1850, I see no reason to interfere with the decision of the moonsiff, and therefore dismiss the appeal, with costs, and confirm the order of the lower court without notice to the respondent.

THE 29TH JUNE 1850.

No. 209 of 1848.

*Appeal from a decision of Moulvee Syed Mohummud Furreedooddeen,
Moonsiff of Jehanabad, dated 5th September 1848.*

Jeoraj Singh, (Defendant,) Appellant,

versus

Lall Daiee, (Plaintiff,) Respondent.

THIS suit was instituted on the 28th December 1847, to recover rupees 63-7, on account of malgoozaree due, as per accounts of putwaree, for 1254 F.

The plaintiff states that she is proprietress of 4 annas of mouzah Aukhooree, and 30 beegahs of jagheer land situated therein, of which

defendant cultivated 14 beegahs, the produce of which was to be divided, in lieu of rent, between him and the plaintiff; that she has frequently demanded payment, but failed to obtain the same, which is proved to be due to her by the putwaree's accounts.

The defendant's reply is in effect similar to the plaint filed in case No. 208, which relates to the same lands as those disputed in this suit. On the 29th February 1848, the defendant petitioned the court that as the plaintiff had sued him for the above sum in a summary suit before the collector of Behar, that case should be required agreeably to Section 15, Regulation VIII. 1831.

The moonsiff, considering this suit immediately connected with No. 208, in which he had given a decree in favor of the plaintiff in this suit, decreed this claim also in her favor.

The appeal filed in this case is similar to that in No. 208.

The witnesses adduced by the plaintiff prove the cultivation of the land by the defendant, whilst the putwaree has duly attested the accounts. As in suit No. 208, the defendant admitted his occupation and cultivation of the lands, claiming the same as his farm, and as his title thereto has been rejected, the reasons given in the decision passed this day in suit No. 208, are equally applicable to this case also. I therefore dismiss the appeal, with costs, and confirm the order of the lower court, without notice to the respondent.

THE 29TH JUNE 1850.

No. 213 of 1848.

Appeal from a decision of Moulvee Syed Humeedooddeen Ahmud, Moonsiff of Aurungabad, dated 2nd September 1848.

Doobey Sooklal Ram, (Defendant,) Appellant,

versus

Kishendyal Ram Doobey, son and heir of Ruttun Ram Doobey, deceased, (Plaintiff,) Respondent.

THIS suit was instituted on the 19th August 1848, to recover rupees 106-10-8, principal and interest on a bond, dated 1st Bysakh 1244 F.

Plaintiff states that defendant borrowed from his father 50 rupees and gave the bond above noted, conditioning to repay the same, with interest at 12 per cent. per annum, at the end of Aughun 1245 F., but has failed to do so, though payment has been demanded; his father being dead, plaintiff, as his heir, sues for the amount.

The defendant, according to the record of the case, is represented to have filed a petition, on the 2nd September 1848, through Hunooman Sahae, vakeel, admitting the justness of the claim, and arranging to liquidate the amount, including court charges, rupees 121 in all, by instalments of 40 rupees monthly in Assin and Aughun, and 41 in Chyte 1256 F., without further interest, to which

plaintiff agreed, and to have been recognised as the *bonâ fide* defendant in the suit by Ajoodhea Persaud, vakeel at the time. On this the moonsiff, without further enquiry into the merits of the case, or demanding proof of the claim, as required by the Sudder Court's Circular Order, No. 35, of the 25th November 1847, decreed the claim in favor of the plaintiff.

In appeal, the defendant denies the debt, and accuses the plaintiff of having caused a forged acknowledgment to be written and filed, which is capable of proof by comparing his signature to the vukalutnamah filed in appeal with that in the original case: it is also urged that he received no notice of the claim, and that the suit has been brought out of spite, in consequence of plaintiff being indebted to defendant's brother.

It is very clear that most unnecessary haste was allowed in the disposal of this suit, and that the moonsiff paid no attention to the orders of the Sudder Court as quoted above: a notice appears to have been served and returned to the moonsiff's court with a receipt dated 16th Bhadoon, or 30th August 1848, and the suit decided in the short space of 15 days from the date of its institution. The case must therefore be remanded for re-trial, and the moonsiff directed to institute strict and searching enquiries into the conduct of the two vakeels before mentioned, with the view to ascertain whether or not a forged acknowledgment of the debt by the defendant was filed by the one, and with the cognizance and connivance of the other; the results of such investigation to be duly reported to this court. Suit accordingly remanded for re-trial, and value of the stamp of appeal to be refunded to the appellant, and decision of the moonsiff reversed.

ZILLAH EAST BURDWAN.

PRESENT: J. H. PATTON, Esq., JUDGE.

THE 3RD JUNE 1850.

Case No. 39 of 1850.

*Appeal from the decision of Gopaul Chunder Ghose, Moonsiff of
Bhuttooreah, dated 31st December 1849.*

Hurrochunder Mundul, (Defendant,) Appellant,

versus

Ramgobind Mookerjee, (Plaintiff,) Respondent.

THIS was an action to recover rupees 135-10-0-8, principal and interest of a bond debt.

Plaintiff avers that the defendant Hurrochunder Mundul and Kasheenath Mundul, deceased, executed a bond on the 24th Sawun 1253, and borrowed rupees 99. The conditions of the bond were that the amount was to be repaid in Jyte 1254, and all sums paid on account endorsed on the back of the instrument. That Kungalee is the widow of Kasheenath and liable for his debt.

Hurrochunder Mundul, in his defence, denies the debt, calls into question the validity of the bond, asserts that Kasheenath died before its execution, and declares the suit a fabrication got up by plaintiff in collusion with his sister-in-law, Kungalee, in consequence of family differences with the latter, and a dispute with the former on account of balance due for the purchase of sugar. After this disclaimer, however, he adopts another and a diametrically opposite line of defence, and challenges plaintiff to come into court and affirm solemnly, in the face of all men, that the claim he makes is honest and true, binding himself in that event to discharge it without scruple or demur.

The moonsiff, after taking precaution to make this plea binding on the defendant as a legal issue, proceeds on its enquiry, relinquishing the others as voluntarily abandoned by him; and the result is an unqualified affirmation by the plaintiff in open court, solemnly and conscientiously made, of the justice and truth of his claim.

The moonsiff has no alternative but to decree the suit, and he does so against Hurrochunder alone, both on the grounds of his moral and legal obligation, and the plaintiff's release of the woman Kungalee from the demand.

I think the moonsiff's decision correct, and affirm it accordingly. The appellant thinks himself aggrieved, because the moonsiff neglected to enquire into and dispose of the other pleas advanced by him, and maintains that he acted illegally in decreeing the case against him individually. I uphold the moonsiff's views on both these points, because in the first he had no option or choice of proceeding, the appellant having virtually abandoned all the other issues, and declaring to stand or fall by the special plea set up, and in the second he decided on an admission and specific undertaking to make good the amount of demand.

THE 3RD JUNE 1850.

Case No. 40 of 1850.

Appeal from the decision of Tuffuzzul Rohman, Moonsiff of Ousgaon, dated 22nd December 1849.

Nuffer Chunder Laha, (Defendant,) Appellant,

versus

Mooktamunnee Dassce, (Plaintiff,) Respondent.

SUIT to recover principal and interest of a bond debt, laid at rupees 58-5-18.

Plaintiff avers that defendant and Khetternath Laha borrowed 45 rupees from him, and executed a bond, bearing date 18th Jyete 1264, the conditions of which were that 24 rupees were to be paid in Poos of that, and the balance in Poos of the following year.

Defendant admits the execution of the bond, and acknowledges that his son, Khetternath, is a party to it, but denies the advance of the cash, and alleges that his son is still a minor. He accounts for the non-advance by stating that plaintiff claimed a sum of money from another son of his, Haradhun, who is dead, and seeing no chance of recovering it in any other way, has had recourse to the present trick and stratagem to extort it from him. He adds moreover that he noticed the non-payment of the sum borrowed to the witnesses at the time they subscribed the bond. Plaintiff files a rejoinder, but it sets forth nothing material save the fact that Khetternath has attained his majority.

The moonsiff rules that both the bond and debt are proved, and that Khetternath is liable, being no longer a minor, and decrees the case against both.

The objection against the decision is that, though the bond is proved, there is no proof of debt by evidence of the payment of the money.

This statement of the appellant is not correct, for, though the testimony last noted has not been adduced to the letter, yet there is abundant evidence that the debt was contracted, and that the appellant admitted having received the cash before the subscribing wit-

nesses at the time the bond was signed and delivered, one of these witnesses being named by himself. I therefore affirm the moonsiff's decision, and dismiss the appeal, without giving notice to the respondent.

THE 10TH JUNE 1850.

Case No. 166 of 1849.

*Appeal from the decision of Nubeen Kishen Paulit, Moonsiff of Cutwa,
dated 26th March 1849.*

Harradhun Bagdee, (Plaintiff,) Appellant,

versus

Aurung, widowed aunt and guardian of Cheeneebas Sirkar, minor,
(Defendant,) Respondent.

Kunnyelal Bose and others, Claimants.

SUIT to recover rupees 266-10-8, principal and interest of a bond debt.

Plaintiff avers that, on the 2nd Bhadoon 1243, one Thakoordas Pal borrowed 125 Sicca rupees from him, on a bond and the mortgage of 1 anna, 12 gundahs, 2 cowrees share of the estate of Sheebraumbattee and other property; that Thakoordoss died without settling the account, leaving as his heir the minor Cheeneebas, who is his grandchild; that the mother of Cheeneebas is also dead, and that defendant is his aunt and guardian.

Defendant admits the debt and execution of the bond and mortgage, but pleads payment in full, amounting to 201 rupees in Assin 1253; that she demanded the restoration of the instrument, but failed to obtain it from plaintiff, who, however, gave her a release from the obligation in the presence of respectable persons.

Plaintiff files a rejoinder, denying payment, though admitting that the offer of payment had been made, even after filing of the suit.

Claimant, Kunnyelal Bose, affirms that one Neelkaunt Pal held in possession a 3 annas 5 gundahs share of the estate of Sheebraumbattee, of which, on 5th of Assar 1253, he sold him one-half, namely, 1 anna 12½ gundahs share, for rupees 143, and on the 24th of Assin 1250, the other half to Sumbhoo Mudduck, in the name of Dhurumdas; that the said Sumbhoo subsequently, on 17th Sawun 1253, sold him his purchased share for 247 rupees, and that he thus became the proprietor of the whole 3 annas 5 gundahs share; that he purchased other shares also of the estate in question to the extent of 9 annas, 17 gundahs, 2 cowrees, and eventually got possession of 13 annas, 2 gundahs, 2 cowrees of the entire talook; that he holds decrees of court for arrears of rent made against Lukhun Pal and others, in proof of his title and possession, and denies that Thakoordoss Pal ever had any right whatever in the property.

Another claimant, Neelkaunt Pal, affirms the sale by Thakoordoss Pal, to his father, Koodeeram, of 1 anna 12½ gundahs share of the estate, and corroborates the statements and averments above made by Kunnyelal Bose.

The moonsiff suspects the genuineness of the bond filed by plaintiff, because, in his opinion, it does not assume the appearance of a document of 13 years' standing, which it purports to be, and entertains doubts as to the truth of his claim, because he evinced so little alacrity in the prosecution of it; the giver of the bond, Thakoordoss Pal, having been dead eleven, and his daughter eight years. He also looks upon the acknowledgment of debt, bond, and mortgage, made by defendant, as a collusive proceeding intended to defraud the claimant of property, the more so that he has not been able to adduce the slightest proof of the alleged payment. He rules, moreover, that a decree awarded on an acknowledgment or admission of claim, can only affect the person and not property, either real or personal, and, acting on this principle, he decrees against the defendant and releases the property pledged.

I differ with the moonsiff first in his law, and rule that not only the person, but every tittle of property pledged in satisfaction of a claim is liable on an admission of that claim, and think he acted quite illegally in decreeing against the person of the defendant, and releasing the property pledged for the payment of the amount decreed. I also dissent from his views on the issues adduced, and am of opinion that there is no reasonable ground for doubting the truth and fairness of the appellant's claim, or throwing discredit on the bond filed by him. Moreover, I look with extreme suspicion on the deed of sale, bearing date 9th of Phalgun 1226, alleged to have been executed by Thakoordoss Pal, in favor of Koodeeram, on which mainly the claimant Kunnyelal Bose rests his right and title, for I have scarcely ever beheld a document, which bears on the face of it so much the impress of fabrication and forgery, the paper being crumbled and rubbed so as to assume the appearance of age, and the writing clear and fresh as if perpetrated yesterday. Under these circumstances, I amend the moonsiff's order, decreeing the appeal, and rule that the property mortgaged in the bond filed by the appellant be made liable for the debt in satisfaction of which it was pledged, the costs of the suit in both courts being borne by the respondent.

THE 10TH JUNE 1850.

Case No. 259 of 1849.

*Appeal from the decision of Hameedul Huq, Moonsiff of Mohummudpoor,
dated 25th May 1849.*

Haradhun Dutt, (Plaintiff,) Appellant,

versus

Bhugwanchunder Bundoo and others, (Defendants,) Respondents.
Buktarunnissa Beebee and others, Claimants.

ACTION to recover rupees 30, the value of 10 maunds of fish plundered. Plaintiff avers that Muttermohun Bose and others hold some rent-free lands in the village of Birmapoor, among which are a tank named Bhattee and 1 beegah 8 cottahs of land renting at rupees 3-13-15 annually, which the ancestors of the Boses leased to plaintiff's grandfather, who, in conformity to the terms of that lease, held possession until his death; that he was succeeded by plaintiff's father and then by plaintiff himself, until dispossessed by defendants on the 2nd of Assar 1255, by the plunder of his fish from the tank in question supplied by him.

Defence affirms that the tank is not dewutter, nor is it situated in the village of Birmapoor, but mal, and belongs to the village of Rautgaon, the property of the claimants, Buktarunnissa Beebee and others; that such fish as it contains is naturally and not artificially supplied, and that the tank is flooded in the rainy season; that water from it is taken to irrigate some neighbouring cultivation, and that, on that account, and the limited space it occupies, it could never hold 10 maunds of fish. Defendants, moreover, deny the plunder, and allege that for some years past the residents of Rautgaon, Mosdanga, and other villages, have been in the habit of catching the fish in the dry season, that they did so last year, and that plaintiff, instead of suing them, has brought this action against them (the defendants) in collusion with the Boses, with the view of obtaining some documentary title to the land in dispute. They also take exception to the enquiry into this matter by the moonsiff, declaring it to be a question affecting a rent-free tenure.

The Boses file an answer siding with the plaintiff and supporting the averments made by him.

The claimants add a rejoinder in support of the defence.

The moonsiff rules that, as the present is a simple case of plunder, it is quite unnecessary to enter into the question of mal and lakhiraj or proprietary right, the only point required to be ascertained being the fact or otherwise of the plunder by defendants of the fish belonging to plaintiff. By the evidence of three witnesses, produced by the plaintiff, and the report forwarded by the ameen, deputed to make the enquiry, it appears that the defendants had appropriated

about 5 or 6 maunds of fish appertaining to plaintiff, while from the testimony on the other hand of two witnesses examined by the moonsiff and eleven by the ameen, it is evident that no one had supplied the tank with fish, and the tank itself was always flooded in the rains. Not satisfied with this contradictory evidence, the moonsiff proceeds to the spot, and, after a full enquiry, determines that plaintiff's claim is unfounded, and the plea set up in the defence just and true. He therefore dismisses the case, and gives a verdict in favor of the defendants, and I see no reason whatever to disturb his award; so far from it I am pleased by the manner in which he has handled the case, and perfectly coincide in opinion with him as to its having originated with the Boses, with the fraudulent object of surreptitiously acquiring a title to the land.

THE 10TH JUNE 1850.

Case No. 19 of 1850.

Appeal from the decision of Mr. J. S. Bell, Moonsiff of the Town of Burdwan, dated 5th December 1849.

Hurreechurn Dutt, (Defendant,) Appellant,

versus

Ram Ghose, (Plaintiff,) Respondent.

Sreenath Bannerjea and others, (Defendants,) Respondents.

SUIT for the cancelment of a sale in execution of decree, laid at rupees 63.

Plaintiff avers that in the village of Deegrooe, Kummul Ghose held a farm; that after his death his widow, Raimunnee, not being able to fulfil the terms of the engagement, resigned the lease in the month of Bysakh; that the landlord then made a fresh settlement for the land, and agreed to let plaintiff have 10 beegahs at an annual rent of rupees 19-5-4, in conformity with which engagements were mutually executed between them; that plaintiff, moreover, paid up all balances amounting to 35 rupees, receiving a receipt for the same, and obtained formal possession; that the defendant, Hurreechurn Dutt, obtained a decree against Raimunnee and got the land in question on the 15th of April 1848, buying in 3 lots, including a tank, for rupees 32, 8 annas.

Hurreechurn Dutt alleges, in defence, that the plaint is false, and affirms that Kummul Ghose, the husband of Raimunnee, during his life time, executed an instalment bond in his favor on the 12th of Jyete 1247, in settlement of monies due on former monetary transactions, and mortgaged the land in dispute as security; that he died before settling the claim, and that the defendant sued his widow on the bond in question and obtained a decree; that the moonsiff decreed

against the property mortgaged, but released the mortgager; that the defendant appealed against the decision, and got it amended to the extent of having Raimunnee included among the property decreed against; that he then executed the decree, attached the property pledged, and had it sold; that at the time of sale there were no bidders owing to the influence exercised by the talookdar, in collusion with plaintiff, to deter them, and that in consequence he was obliged to buy in a portion of the property. The defendant further declares that Raimunnee acknowledges having tendered the resignation of her husband's (late) lease, on account of inability to fulfil the terms of the engagement, in her present plaint, whereas, in her answer to the suit on the instalment bond, she avers, in disproof of the debt alleged to have been contracted by him, that her husband was in easy circumstances, and quite independent of pecuniary aid from any party. That had the *istefa*, or relinquishment of the lease, been true, Raimunnee would have mentioned the fact in her reply above adverted to, that Raimunnee had no power to alienate property pledged by her husband in satisfaction of just dues, and that plaintiff urged no objection to, and filed no claim in, the suit for execution, which he ought to have done.

Plaintiff's rejoinder goes to prove that he was ignorant of the progress of the suit in question, or should undoubtedly have filed a protest, and denies the propriety of making him responsible for the *laches* of Raimunnee.

The defendant talookdars, Sreenath Bannerjea and others, file a reply in consonance with the views of the plaintiff and the averments advanced by him.

The moonsiff, after particularizing the lands sold in execution of the present decree, and enumerating them at 15 beegahs and $\frac{1}{2}$ a cottah, and a tank comprising 16 cottahs, proceeds to record his judgment in the following words:

"The witnesses of plaintiff, taken before this court, prove the pottah of plaintiff, the truth of *istefa* of Raimunnee, and plaintiff's possession from date of pottah. The defendant talookdars acknowledge the above facts, and the witnesses of local investigation, who are the acknowledged witnesses of no party, prove the veracity of plaintiff's statement. The allegation of collusion of plaintiff with talookdars advanced by defendant Hurreechurrun is without proof and far-fetched, for the fact of Raimunnee's *istefa* and plaintiff's possession having been proved, collusion vanishes. Raimunnee, in her answer in regular suit missil No. 291, declares anent the easy circumstances of her husband whilst he was living, which debarred his resort to loans; but this statement cannot be construed to mean that Raimunnee after her husband's death was well off, which would render the fact of *istefa* doubtful. If a man by his exertions can maintain his family and be free from debt, yet this fact is no criterion for the formation of an opinion that his wife after his demise

would be in affluent circumstances. On the contrary, it is well known that, among the cultivators of soil of this class, the well-being of a family depends upon the exertions of the male members of the family, and their death involves the whole family in poverty. In the case No. 291, which was on account of kistbundy subscribed by Raimunnee's husband, Kumul Ghose, defendant Hurreechurrun obtained a decree on proof of his claim; and this fact establishes that Kumul Ghose was not in affluent circumstances, but in debt, and consequently there is no doubt that his widow, from want of means, resigned his jote, established as the fact is by aforementioned substantial proofs. The suit No. 291 being purely a case of a monetary transaction, there was no need of Raimunnee's declaring, in her answer in that case, the fact of the istefa of her husband's jote. Defendant Hurreechurrun argues that when in 1247 Kumul Ghose mortgaged the disputed land and jumma to him in kistbundy, Raimunnee had no authority to alienate the same; but on the perusal of the kistbundy, which is dated 12th Jyete 1247, there is no specification made what land and jumma are therein alluded to. There is no formal mortgage in kistbundy to Hurreechurrun, nor does Kumul Ghose promise non-alienation, and consequently, according to Construction No. 588, all *bonâ fide* alienation before attachment is valid. If it be inferred that the property was mortgaged, and is the same for which plaintiff has obtained a pottah from a talookdar, yet Hurreechurrun had no right to sell the same after plaintiff's pottah. There is a great difference between alienation and istefa. Raimunnee's istefa is no alienation. She did not transfer the jumma and land of her husband by sale, that would constitute alienation. Her husband possessed the ryutty right in the land, which she resigned to the malik zemindar. Plaintiff engaged for the said lands from the zemindar talookdar. His engagement is free from all obligations of court and other debts of Kumul Ghose, with whom he has no concern. If plaintiff derived his title from Raimunnee, his land would then be answerable for Kumul Ghose's debt; and the latter's mortgage (if it be considered as such) only holds good as long as he and his heirs and assigns are in possession. Plaintiff is neither, consequently legally Hurreechurrun had no authority to sell property which belonged to plaintiff, and which he derived as the ryut of the talookdar defendants. For the above reasons a decree is given in plaintiff's favor. Plaintiff to obtain possession, as per measurement, of 8 beegahs, 19 cottahs, 4 chittacks, tank Champagoreah inclusive, and the sale of 15th April 1848, anent 15 beegahs $\frac{1}{2}$ cottah and Champagoreah tank, be reversed. Costs of suit of plaintiff and talookdar payable, with interest from this day till realization thereof, by defendant Hurreechurrun."

I never saw a case in which law and equity were at greater variance. The property attached and sold in execution was unquestionably mortgaged as security for the debt decreed, and its proceeds

equitably are the right of the creditor, but the *law* rules it otherwise and makes a totally opposite appropriation, and its dictum is paramount. The foregoing decision of the moonsiff details the process by which the transfer of right has been effected, and the record is sound, lucid, and legal. I therefore see no reason whatever to interfere with the award of the moonsiff, and affirm it accordingly, dismissing the appeal.

THE 11TH JUNE 1850.

Case No. 20 of 1850.

Appeal against the decision of Hamidool Huq, Moonsiff of Mohomedpore, dated 12th December 1849.

Ram Chunder Bundoo and others, (Defendants,) Appellants,
versus

Eshan Chunder Bundoo and others, (Plaintiffs,) Respondents.

SUIT for the reversal of an award under Regulation V. 1812, laid at rupees 46-10.

Plaintiffs affirm that, in the village of Gungunea, Netai Dey held a farm at an annual rent of rupees 46-8-5; that in this farm were four co-partners, one Sreenath Dey, whose share was rupees 15-8-1-2-2, another Surnomye, whose share was the same, the third, Eshan Chunder Dey, whose portion amounted to rupees 14-7-1-2, and the fourth, the defendant Obhursa, whose portion was rupee 1-1; that these partners pay the rent although Netai's name still remains registered in the zemindaree books, and that one and all have paid up the balances for 1255, and received discharges for the same. (Here follows an enumeration of the payments with particulars of amount, date, to whom paid, and the like.) That notwithstanding these payments, defendants, in collusion with their agent, Ram Koomar Gon, attached their crops, and sued them under Regulation V. for rupees 45-8-5. That they deposited the amount claimed, which was appropriated by the ijaradar, *i. e.*, defendants' party, and have brought this action to recover the original sum deposited, with interest and penalty of three times that amount, for extortion under the provisions of Section 52, Regulation VIII. 1793.

The defence of Ramchunder Bundoo and Bhugwan Bundoo goes to affirm that Sreenath Dey, Eshan Bundoo, and Ishur Chunder Tah held each a third share in the farm in question, and that the women, Surnomye and Obhursa, have no right, title, or interest therein. That the former partners in the farm were Bunmalee Dutt and Radhanath Dey; that they fell into balances for 1255 up to Maugh, and, on being sued under Regulation V., deposited the demand as justly due. That two months were still wanting to complete the

year, and a small balance (2 rupees) still due; but that before they could institute proceedings against them for recovery, the plaintiffs forestalled them, and have brought this false action. That Surnomye lives in another jurisdiction and cannot be a party to this suit, and that the plaintiffs' affirmation of the payment of the entire balances for 1255, is unworthy of credit, because their discharge is dated in the month of Maugh, and the year had still two months to run, and it is not very likely that they would have paid any rent in advance. That Eshian Bundoo and others made overtures of settlement, provided defendants would forego interest and the costs of suit, but that the latter declined and would listen to no compromise.

The moonsiff rules that the plea of the defendants is groundless and false, and cannot for a moment be maintained. That on the 11th of July, they were required to file exhibits in support of their statement and produce their gomashtha, or agent, together with their accounts and papers, and though upwards of 5 months have elapsed, and the call has been repeated and reiterated again and again, they have failed to do so. He moreover disregards the implication of falsehood as regards payment of advance laid against the plaintiffs by the adverse party, and thinks the proceeding on their part both a natural and a probable one, assigning his reason for the belief, the punctuality with which they had discharged all former demands, and looks upon the exception taken to Surnomye's living out of jurisdiction as insignificant and immaterial to the case. On the other hand he is clearly of opinion that the plaintiffs' case is fully established, and that they have proved, beyond a question, both by exhibits filed, and witnesses examined, that one and all of them have paid the balances for 1255, and hold discharges for the same. He orders therefore that the case be decreed in favor of the plaintiffs; that the award given under Regulation V. 1812 be cancelled and reversed, and that the defendants' ijaradar and gomashtha pay over to the plaintiffs, with interest up to date of payment, the sum of rupees 90-0-10, being the amount deposited by them on the attachment of their crops and penalty of twice that sum incurred by the defendants for oppression and extortion under the provisions of the enactment of 1793, above quoted. I perfectly coincide in the view the moonsiff has taken of this case, and consider his judgment just and proper, and in entire accordance and keeping with the evidence adduced. I therefore uphold his order, and dismiss the appeal, with costs of both suits against the-appellant.

THE 11TH JUNE 1850.

Case No. 361 of 1849.

Appeal from the decision of Gunga Churn Shome, Moonsiff of Selimabad, dated 28th August 1849.

Ramdhun Laha, (Defendant,) Appellant,

versus

Mohesh Chunder Ghosal, (Plaintiff,) Respondent.

SUIT for arrears of rent, laid at rupees 9, principal and interest.

Plaintiff avers that rent is due from defendant from 1249 to 1251 inclusive, at the following rates, *i. e.*, 10 annas 18 gundahs for 1249, rupee 1 for 1250, and rupees 8, annas 4, gundahs 2, for 1251, making a total of rupees 9-15; that the former item is for interest alone, and the rest for principal and interest combined; and that the claim is in strict accordance with the record of rents collected by the suzawul and filed in the collector's office.

Defendant affirms that, according to plaintiff's own showing, he owes no rent for 1249. He admits that he was in balance for 1250 of as. 5, g. 17, c. 1, k. 1, and for 1251, of as. 5, g. 6, c. 2, k. 2; but that his payments during the last mentioned period amount to rupees 15. (Here he enumerates amounts and dates of payment, and that he holds receipts for the same.)

The moonsiff rules that, although defendant produces the above discharges, yet it is clear from the documents filed by the plaintiff, which are records of the collector's office, and bear his seal and signature, that he only paid rupees 10, during 1251; that it is also evident that the releases, filed by the defendant, correspond with the entries of payments made in the suzawul's papers in date and amount, with the exception of one dated 13th Sawun for rupees 4, and another dated 29th Bysakh, for rupee 1; that these payments might have been made by him and appropriated by the suzawul; but that it was incumbent on him to come forward and make the allegation when all, under similar circumstances, were invited to do so by the usual general proclamation issued by the collector on the withdrawal of the suzawul; that his having neglected this warning bars him from any remission in account, and that he has now no remedy but to look to the suzawul for the amount of surplus rent paid by him. Under these circumstances the moonsiff decrees in favor of the plaintiff, and I cannot see the slightest reason for interfering with his award. The appeal is therefore dismissed, and the moonsiff's order affirmed.

THE 13TH JUNE 1850.

Case No. 24 of 1848.

Appeal from the decision of Moulvee Fuzzle Rubbee, Principal Sudder Ameen of East Burdwan, dated 17th November 1848.

Jyeram Chatterjea, (Plaintiff,) Respondent,

versus

Ramdhun Majleah, (Defendant,) Appellant.

ACTION for defamation of character, laid at 800 rupees.

This case is reported in page 130 of Decisions in Zillah East Burdwan for the 23rd July 1849.

Jyeram Chatterjea applied to the superior court for the admission of a special appeal from the decision of the officiating judge, on the ground that that officer had awarded merely nominal damages, although his finding had confirmed that of the principal sudder ameen, and "it is proved that abuse was uttered in no measured terms at the plaintiff by the defendant."

The special appeal was admitted, on the ground that, after so strong an expression of the nature of the abuse, as that recorded by the judge, he should have fully explained under what circumstances the damages could be justly so reduced as to be at the lowest possible amount of nominal compensation, and the case remanded for re-investigation.

I have carefully weighed the issues in this suit and am clearly of opinion that compensation is due from the defendant to the plaintiff for the abusive and opprobrious language used, but not either to the extent claimed or the extent awarded by the principal sudder ameen. In consideration of the relative position in life of the parties, and the feelings of hostility entertained by the one towards the other, I think that an award of 200 rupees ought to satisfy the plaintiff, and be deemed ample amends for the injury sustained. I therefore, in amendment of the principal sudder ameen's order, decree that amount to be paid to the plaintiff, with interest up to the date of payment, charging the defendant with the costs of all the courts to which the plaintiff has had recourse to obtain redress from the wrong inflicted by him.

THE 13TH JUNE 1850.

Case No. 41 of 1850.

Appeal from the decision of Moulvee Alli Hyder, Moonsiff of Bamunara, dated 24th December 1849.

Radhanath Sidhae and others, (Defendants,) Appellants,

versus

Urfun Nissa Beebee, (Plaintiff,) Respondent.

ACTION to recover possession of land, with mesne profits, laid at rupees 63-6-4.

Plaintiff avers that her husband, Ghulam Hosain, executed a deed of gift in her favor in Poos 1235, by which he transferred all his possessions to her for a consideration of 198 rupees; that she sold portions of the land to Ghulam Usghur and others, and kept the rest in her own possession; that among the land so conveyed to her by her husband was a lot consisting of 12 cottahs, 12 chittacks, for which the defendants, Radhanath Sidhae and others, had executed an engagement with her husband in Chyte 1233, agreeing to pay an annual rent of rupees 2, 4 annas; that according to said agreement they paid her husband the rent for 1234, and from that period till 1251 they discharged the same to her, on the ground of her proprietorship under the deed of gift; that in 1252, her husband died, and from that moment defendants ceased their payments; that she brought an action against them for balances that had accrued from 1252 to 1254, in case No. 121, in which they affirmed, in their reply, that her husband had sold the land to their ancestors in Chyte 1241 for 47 rupees; that the suit was struck off the moonsiff's file, because he deemed it both inexpedient and irregular to try a question of proprietary right and possession in a suit for arrears of revenue; that the case was summarily appealed and remanded for re-investigation and eventually dismissed by the moonsiff; that she has transferred all her right, title, and interest in the possessions received from her late husband to her daughter, Hoorun Nissa, with the exception of the land in dispute.

Defendants affirm that, in her petition of plaint in suit No. 121, plaintiff declared the date of her deed of gift to be the 7th of Bysakh 1235, whereas in the present plaint she states it to be dated in Chyte; that this error ought to have vitiated the proceedings instituted by her, as it was not within the moonsiff's competence to receive and file a supplemental petition in correction; they deny the truth of the deed of gift on which plaintiff rests her claim, and say that it was never executed by her deceased husband, alleging as a proof that she can produce no engagements for the cultivation of the land either by their ancestors or other tenants; that all the above pleas were advanced by them in suit No. 121 in defence, and that the deed of gift is a fabrication and forgery perpetrated by the agents of the plaintiff with the view of refuting them; that it was a notorious fact, at the time of its preparation, that an old stamp of 2 rupees had been purchased by the plaintiff's party for 16 rupees; that plaintiff never obtained possession of any land during the lifetime of her husband in virtue of any assignment, but succeeded as heir at law; that her late husband was largely indebted to them and others, hence the fabrication of the deed of gift for reasons too obvious to be detailed; that her sale of a portion of the property alleged to have been conveyed by the deed in question to Asghur and others, cannot prejudice their title or the fact be taken as evidence against their claim; and affirm, moreover, that the land in dis-

pute was sold to their ancestor Debnath Sidhae by plaintiff's husband, and that they have been in possession ever since under the deed of sale, which they filed in suit No. 121, and got attested by witnesses; that the said suit was dismissed in consequence of non-possession of plaintiff, and not having been appealed, the issue cannot again be tried in another suit.

Plaintiff files a rejoinder, the only material part of which is reference to the error in the date of the deed of gift noticed by defendant, and its correction by a supplemental petition under the sanction of the presiding judge (moonsiff).

The moonsiff rules that plaintiff's right, title, interest, and possession in virtue of the deed of gift are fully established by the evidence of five witnesses, one of whom is the engrosser of the instrument or conveyance, while he rejects the deed of sale, produced by the defendants, as a spurious document, attested though it be by the copies of the depositions of three witnesses filed by them in the suit. He also discredits the evidence of two persons named by the defendants, and examined as to the fact of the perpetration, on the part of plaintiff, of the forgery of the deed of gift. The moonsiff remarks, with reference to the defendants' plea that the suit No. 121 not having been appealed, the order passed therein must be considered final and binding on all whom it concerns, that it is expressly stated in the record of judgment (roobakaree) in that case that the question of proprietary right and title could not be tried in a suit for balance of rent, and that the point had consequently neither been mooted nor adjusted, (this latter is rather an inference from, than a declaration made in, the moonsiff's decision); he also affirms the engagement executed by the defendants in favor of plaintiff's late husband for the parcel of land above adverted to, and maintains her right to the rents accruing thereon, her title being proved by the evidence of four witnesses, two of whom prove the payment during Ghulam Hosain's lifetime. Under these circumstances, he decrees the case in favor of the plaintiff, upholding her possession and right to the balances of revenue due from 1252 to 1255 inclusive, but disallows her claim to mesne profits, which he alleges has not been established.

The principal point argued in this case, was whether or not the decree passed in suit No. 121 was final and conclusive in all its bearings; and I must confess that the question is a very difficult one, not from the spirit, purport, tendency, and even result of the enquiry; but the terms in which a material part of the award is couched. The moonsiff dismisses the claim for arrears of rent, and records it as his opinion that the plaintiff (the respondent in the present appeal) was not entitled, *because she was not in possession*. This version of his proceedings differs from that above given by the moonsiff in his decision, but nevertheless it is true. Now the appellant party argue that this award clearly affects proprietary right, and having been recorded and not appealed, the issue involved therein becomes final and

conclusive, and valid under the sanction of law. The respondent party, on the other hand, affirm that though disqualification is above recorded against them, on the ground of non-possession, the merits of proprietorship formed no part of the investigation of the suit under review, nor was any evidence taken from either party to establish the fact. They maintain, moreover, that under such circumstances the provisions of Section 16, Regulation III. 1793, are no bar to the entertainment and disposal of the present suit, as in it have been tried and agitated issues omitted in the other. I coincide in this view, and think, moreover, that the term non-possession was a *lapsus* in the decision in suit No. 121, and not intended by the moonsiff to bear the interpretation put upon it by the appellant. This point settled, I have only to affirm the award of the lower court, which I consider judicious, sound, and just, as regards the disposal of the issues brought to the bar of its judgment.

THE 14TH JUNE 1850.

Case No. 42 of 1850.

*Appeal from the decision of Nobin Kishen Paulit, Moonsiff of Cutwa, dated
26th December 1849.*

Neel Madhub Doss Byragee, (Defendant,) Appellant,

versus

Nursinghdeb Udhikari, (Plaintiff,) Respondent,

Motee Bushtomee and others, (Defendants,) Respondents.

ACTION to recover possession of land and rent, laid at rupees 128, 9 annas.

Plaintiff says that in Gunge Moorshidpoor, one Degumber rented a parcel of land consisting of 1 cottah at Sicca rupee 1, 1 anna, which parcel was purchased by his pupil, Manik Chund Doss, for 46 rupees at a subsequent period; that the said pupil got his name registered as proprietor and was put into possession; that Manik Chund died, but before that event made him present of the land in question verbally in consideration of his being his spiritual guide; that his widow, Surnomye, ratified the pledge of her deceased husband, and executed a deed of gift on the 8th of Aughun 1252 in his favor, transferring the land; that the deed in question was registered and sealed by the cazee of the pergunnah, and that he obtained possession accordingly; that on the 27th of Aughun 1252 the defendant, Motee Bushtomee, made a settlement for the land at a rent of 10 annas per mensem, or rupees 7, 8 annas per annum from Poos 1252 to the end of 1256, executing an engagement to that effect and receiving a lease; that in conformity thereto she paid rent for 4 months, *i. e.*, till Chyte 1252, and then discontinued; that after this she colluded with her relative, the defendant Neel Madhub Dass, and

got him to institute a fraudulent suit against her (No. 213,) for balance of rent, in which she admitted the claim, and alleged that she had given an engagement for the disputed parcel to him on the 8th Bysakh 1249, at a rent of rupee 1, 8 annas, and had paid the same up to 1252, acknowledging the balance for 1253, which was decreed against Motee, notwithstanding his protest, or claim which he duly advanced in the suit; that on the strength of this collusive decree given on Motee's admission of claim, she and Neel Madhub have ousted him.

The defendant, Motee Bushtomee, confirms the above statement, and maintains the truth of the allegations set forth therein. She adds that she discharged all the balances due by the terms of her engagement to Neel Madhub, *i. e.*, to the year 1254; that on the 1st of Bysakh 1255, Neel Madhub transferred the land in question to Rasmohun Udhikari by gift verbally made, with whom she entered into like engagements, and has continued to discharge the rent; that plaintiff has committed a *laches* in not suing Rasmohun; that his protest in suit No. 213 was set aside and his claim rejected, because he was unable to adduce any evidence, documentary or otherwise, in support of the plea and decree given in Neel Madhub's favor, which, on account of not having been appealed, has become final and conclusive.

The defendant, Neel Madhub Doss, reiterates the purport and spirit of Motee's answer, with the exception of the alleged gift of the land to Rasmohun, which he disclaims altogether as being on unfriendly terms with him. He adds on the contrary that it is owing to collusion with Rasmohun that Motee has not paid up the balances for 1255 and 1256.

The defendant Surnomye files a petition corroborative of the facts alleged in the plaint.

The moonsiff rules that the points to be decided in this suit are : First, whether the plaintiff got the land in dispute by deed of gift, or the defendant, Neel Madhub, by purchase? Secondly, from whom Motee Bushtomee received her lease, from plaintiff or defendant? Thirdly, whether there is any bar to this suit in consequence of plaintiff having omitted to make Rasmohun Udhikari a party? and lastly, whether in the record of judgment, in suit No. 213, for balance of rent, any order is made affecting proprietary right, and whether that award is a bar to the institution, and enquiry into the merits, of the present suit? In the moonsiff's judgment the first is settled in the plaintiff's favor by the deed of gift, the lease of Motee Bushtomee, and the discharges of revenue, exhibits filed by him and supported by evidence, registration, and seal of landlord, the fact of possession being also substantiated, while the defendant, Neel Madhub, has been unable to produce any document whatever of purchase, though required to do so on the 21st of December 1849, or give the slightest information as to the particulars of it, such as

when it was consummated, from whom, and at what valuation. The second point is also given in plaintiff's favor, for, although two of the witnesses subscribing the engagement executed by Motee, deny all knowledge of the transaction, yet it is abundantly clear that they have been bought off by her and suborned to give totally opposite testimony. The document, moreover, is attested by other evidence, and supported by the lease in all its bearings. The third is similar in result, the moonsiff ruling that the plaintiff having no claim against Rasmohun could not make him a party to the suit; and the last ditto, the moonsiff recording it as his opinion that no enquiry into proprietary right and title was made in the investigation of the suit No. 213, and the decree, being given on admission, under circumstances of extreme suspicion of fraud and collusion, could not be considered final and conclusive, and consequently no bar to the present suit. From the above considerations the moonsiff decrees in plaintiff's favor against Neel Madhub Doss and Motee Bushtomee, awarding him possession and balance of rent due, and charging the defendants with the costs of suit.

Neel Madhub appeals against the decision, and maintains that the plaintiff has made out no case, the exhibits filed by him being unproved, with the exception of the deed of gift, which is only partially supported by evidence, and that if he had, the award given in suit No. 213 is an insurmountable bar to the entertainment of the present suit. It is true that the lease and discharges filed by the plaintiff have not been attested by witnesses; but I do not think this necessary in the total absence of any proof whatever of the pleas advanced by the appellant, and from the consideration of their not being in themselves the essential and fundamental proofs of claim, but aiding and subserving the principal one. As regards appellant's other objection, I cannot for a moment entertain it for the reasons stated by the moonsiff. Under these circumstances, I affirm the moonsiff's decision, dismissing the appeal, and charging the appellant with the cost of the suit in both courts.

THE 17TH JUNE 1850.

Case No. 43 of 1850.

Appeal from the decision of Khodah Buksh, Moonsiff of Culna, dated 26th December 1849.

Sheikh Mehurullah, (Defendant,) Appellant,
versus

Mohummud Buksh, (Plaintiff,) Respondent.

ACTION to recover possession of a share in a tank, with mesne profits, laid at 14 rupees.

Plaintiff affirms that in the village Agradeh, the ancestors of plaintiff and defendant held office in the astana, or burial place, of Dewan Shah and Oojul Shah; that attached to the latter is a tank

called Durgahpooker comprising about 6 beegahs, of which both parties held joint possession by an allotment of shares, (here detailed;) that the share of plaintiff's father was gundahs 13, cowree 1, krant 1, which he inherited, and of which he was dispossessed in 1251 by defendant.

Defendant avers that the share of the tank in question was sold to defendant by plaintiff's father on 22nd Sawun 1229, for 9 rupees; that he purchased other shares from the co-partners, and held a hereditary right to a 3 gundahs share, making his interest altogether amount to annas 7, gundahs 4, cowrees 2, krant 1, of which he held possession conjointly with his brother Nukkoo; that in Bysakh 1254, Ghulam Tabrez, plaintiff's first cousin, bought two of the shares purchased by defendant for 20 rupees, but paid only for one, namely, 10 rupees, and deposited 6 rupees in part payment of the other; that some differences took place between them about the fish in the tank, and the latter sale was never completed, Tabrez receiving back the deposit money; that Omed Ulli Bechoo subsequently purchased the share in question, and consequently the present suit is at Tabrez's instance from annoyance at having lost the purchase.

Plaintiff's rejoinder goes to contradict the allegation of the sale of share by his father, and asserts that he remained in possession until his death which occurred in 1250.

This suit was tried by the present moonsiff, and on the 17th of August 1848 decreed in the plaintiff's favor. The defendant appealed against the decision and had the case remanded for re-investigation by the principal sudder ameen, with instructions to take evidence regarding the fact of defendant's purchase and decide the case on its merits. On the 17th of December, the proofs in question were required from defendant, and on the 24th idem he produced the only surviving witness, (Kaloo,) out of seven who had subscribed the deed of sale, whose evidence was then and there taken. When the case was first investigated, four witnesses were examined on the part of defendant, and among them the said Kaloo, but their testimony was deemed unworthy of credit from the following considerations, first, that of the number, three of them, namely, Kaloo, Abdoo and Omed were parties to the suit, *i. e.*, defendants; and secondly, that the whole four were relatives and connections of defendant. Their evidence was also discredited by the principal sudder ameen in conformity to precedent laid down and opinion expressed by the Sudder Dewanny Adawlut; and there are important discrepancies in the testimony given by Kaloo on the 17th of May and 24th of December 1848. Under these circumstances, the moonsiff rules that the defendant's plea is unfounded and unsupported by evidence. He is also of opinion that from the defendant's own showing the plaintiff had a hereditary share in the tank "Durgahpooker;" and that it is abundantly proved from the investigation made that plaintiff and his father before him held possession till 1250, and

were dispossessed by the defendant in 1251. He therefore decrees the suit in plaintiff's favor, and holds him entitled to gundahs 13, cowree 1, krant 1 share of the tank, awarding him possession of the same, together with the mesne profits.

It was contended, in appeal, that the moonsiff circumscribed the enquiry ordered by the principal sudder in remanding the case, and omitted to call the witnesses named by the appellant. But on a reference to the record, it is clear that such is not the case, and that the moonsiff acted in strict conformity both with the instructions of the appellate court and established usage. The appellant's plea is purchase, and in support of that plea he has not been able to adduce evidence. I cannot therefore admit that he is entitled to cite witnesses to prove possession, the other point argued in appeal. Under these circumstances, I affirm the decision of the moonsiff, and dismiss the appeal, charging the appellant with the costs of the suit.

THE 20TH JUNE 1850.

Case No. 6 of 1850.

Appeal from the decision of Nazirooddeen Mahomed, Acting Sudder Ameen of East Burdwan, dated 25th March 1850.

Maharajah Mahtab Chand Bahadur, Rajah of Burdwan, (Plaintiff,) Appellant,
versus

Ramchurrun Mitter, (Defendant,) Respondent.

THIS was an action to recover interest accumulated subsequently to the institution of a suit for arrears of revenue, in which the principal and interest equivalent to the principal had been adjusted. The suit was laid at rupees 16-5.

The original action was for rupees 327-6-4, and the interest accruing thereon had accumulated so as to exceed the principal antecedent to the institution of proceedings to recover the amount.

The suit was decreed in appellant's favor, and he subsequently filed an action for accumulated interest during the period the case was under investigation. The claim was rejected, and hence the present appeal; the arguments urged in favor of which embraced two precedents established by decrees of the Sudder Dewanny Adawlut, the one dated 15th of July 1808, and the other 19th of December 1823, contained in volumes I. and III. of the printed Reports of Civil Causes decided by that tribunal.

I have carefully examined the decisions in question and the principles on which they are based, and confess that I do not perceive their applicability to the suit under review. The award of accumulated interest subsequent to institution of action in both the cases, was made evidently from the consideration that the delay in the

final adjustment of the suits, which was considerable, was mainly ascribable to the courts of judicature through which they passed, and not to procrastination in any degree on the part of creditors during their progress. In the present appeal the case is as totally opposite as it can well be, all the delay involved being exclusively chargeable to the appellant and none to the courts. Under these circumstances, I affirm the acting sudder ameen's decision, dismissing the appeal, and think the present no case for the exercise of the discretion indicated in the cases quoted, to the exclusion of the broad principle laid down in the provisions of Section 6, Regulation XV. 1793.

THE 20TH JUNE 1850.

Case No. 7 of 1850.

Appeal from the decision of Mahomed Sayem, late Sudder Ameen of East Burdwan, dated 14th February 1850.

Nusseeram Biswas, (Defendant,) Appellant,

versus

Sonatun Shah, (Plaintiff,) Respondent.

ACTION to recover principal and interest of a debt on bond, laid at rupees 434, 8 annas.

This suit was tried *ex parte*, and a decree given in favor of the plaintiff, and although the period for the admission of appeal was passed when the defendant made application to the court, the indulgence was accorded to him by my predecessor for the following considerations. From the register of the sudder ameen it appears that the plaintiff filed his plaint on the 28th of December 1849; that on the 4th of January 1850 notice of action was issued, and a return of "*non inventus*" made thereto by the nazir on the 9th; that on the 10th the summons (*ishtehar*) was proclaimed and a similar return made thereto on the 25th, but without the nazir's signature or the customary attestation of its due issue; that on the 13th of February the plaintiff got his subpoena issued, and on the following day his witnesses attended and deposed, and the case was decided; that on the 19th, five days subsequent to the passing of final orders, the nazir reported that the witnesses were in attendance and ready to give their deposition, and that the sudder ameen has taken up this suit out of turn, there being 96 cases before it on his file.

In conformity with the permission given, the defendant files his petition of appeal, which is accepted and the case hereby remanded for re-investigation.

Although the sudder ameen is at present under suspension, I have considered it my duty to call on him for explanation of the irregularities in his proceedings in the conduct of the suit noticed above, and directed the case to be entered on the miscellaneous file of my court.

THE 20TH JUNE 1850.

Case No. 45 of 1850.

Appeal from the decision of Nobin Kishen Paulit, Moonsiff of Cutwa, dated 27th December 1849.

Ramlal Dutt and others, (Defendants,) Appellants,

versus

Kethenath Seal, (Plaintiff,) Respondent.

SUIT to recover balance of commercial accounts, laid at rupees 177, 6 annas.

Plaintiff avers that in the town of Cutwa his granduncle, Prankishen Seal, had a house of business; that his father carried on the concern after Prankishen's death, and he after his father's; that one Khoodeeram Dutt was a creditor in the books of the house, and that, on a settlement of his account from 17th of Assin to the 28th of Chyte 1246, a balance was struck to his debit amounting to Sicca rupees 183-3-10; that on the anniversary of the festival of Ramnabomee during the three following years he paid rupees 4, 11 annas in part, which reduced his balance to Sicca rupees 168-2-10; that Khoodeeram then died, and left defendant Ramlal Dutt and others his heirs; that on the 1st of Bysakh 1255, the defendants made one payment of rupee 1, 14 annas towards the balance, leaving it at Sicca rupees 166-4-10, or Company's rupees 177, 6 annas.

Defendant, Ramlal Dutt, denies all knowledge of, and participation in, the transaction, and says that his father died on the 27th of Bhadoon 1248, and could not have paid plaintiff 4 rupees, 11 annas, on the 8th of Bysakh 1249, as he avers. He remarks as a circumstance worthy of notice that, although plaintiff has declared that the defendants paid him 1 rupee, 14 annas, in Bysakh 1255, in further liquidation of the alleged balance, he is unacquainted with their names and cannot state them. He affirms in conclusion that Khoodeeram's widow and infant son reside in zillah Rajshahye, and that until notice of action is served on them the present suit cannot proceed.

In the moonsiff's judgment the points to be ascertained in this case are, first, whether or not all the defendants have been served with notices of action? secondly, whether or not Khoodeeram was a creditor to the house, and what amount of his debt, in the former event was repaid by him during life and by his heirs after death? and lastly, whether or not the defendants are liable for his engagements? These questions are settled in the plaintiff's favor by the enquiries made by the moonsiff, who has taken evidence to all the facts they embrace. The service of the notices is proved by the serving peons, or officers of the court, and the fact of Ramlal's attendance and prosecution of claim. The commercial account-books establish the fact of Khoodeeram's being a creditor to the firm, and having died in debt to it to the extent of Sicca rupees 168-2-10,

and the entry therein of the payment by the defendants of 1 rupee 13 annas fixes their liability.

There is evidence also of the settlement of accounts between the plaintiff and the defendants, and their undertaking to pay all demands. There is, however, a slight discrepancy between the entries in the day or rough account book and the fair cash account; that in the former being Ramlal *Dey* and the latter Ramlal *Dutt*; but the moonsiff considers the difference quite immaterial, and ascribes it to the hurry of business, being satisfied that the entry in both books was intended to apply to the principal defendant. The moonsiff, moreover, discredits the evidence of the witnesses brought by the defendants to prove that Khoodeeram died on the 27th of Bhadoon 1248, they being men of low caste and mean condition; and remarks that the ishtehar and notice issued by the collector of Nuddea, announcing the fact, filed by the defendants in support of their plea, makes no mention of the period the event took place. From the above considerations, and taking into account that though Khoodeeram died in Bhadoon 1248, the transactions between him and the firm of the plaintiff, extending over a period of seven or eight years, still brought him within the range of the dates of the early payments, the moonsiff decreed the case against the defendants, and awarded to the plaintiff the principal of his claim, the amount for which he sued, together with interest from date of award to date of payment.

The points argued in appeal were the non-attestation of the commercial account book by the gomashtha, or agent of the house, the death of Khoodeeram prior to alleged payment, the non-residence of Khoodeeram's widow in Beerbhoom but Rajshahye, the non-service of notice of action on her, and the discrepancy apparent in the day book and fair cash account.

As all these objections have been satisfactorily disposed of by the moonsiff, I cannot entertain them, and therefore dismiss the appeal, affirming the decision of the lower court.

THE 21ST JUNE 1850.

Case No. 5 of 1850.

Appeal from the decision of Mahomed Sayem, late Sudder Ameen of East Burdwan, dated 23rd February 1850.

Sadoo Churrun Udhikaree and others, (Defendants,) Appellants,

versus

Golamee Mundul, Plaintiff, (Respondent.)

ACTION to recover the principal and interest of bond debt, laid at 720 rupees.

Plaintiff affirms that defendant borrowed 500 rupees on a bond, agreeing to be charged with the usual rate of interest, and repay the

debt in the following Phalgun; that on defendant's failing to do so he brought an action against him in suit No. 55, for 675 rupees, the amount then due, which case was struck off the file in consequence of delay on his part in filing his rejoinder, and that he now sues him for the same debt, which with interest has accumulated to the amount of his claim.

Defendants deny the debt and bond, and affirm that the suit No. 55 was defaulted owing to plaintiff's inability to accommodate matters and fabricate documents necessary to support his false claim within six weeks. They state, moreover, that they are in easy circumstances, having a considerable business and quite independent of pecuniary aid in the shape of loans and the like, whereas plaintiff is in debt and difficulty, and utterly unable to make a cash advance equivalent to the amount claimed. They then proceed to state that the present action has been brought at the instance of one Hurro Chunder Bhattacharj, to counteract a claim for 1000 rupees made against him by one of the defendants, Ram Chunder Udhikaree, in suit No. 50, in the sudder ameen's court, and is a fraudulent and collusive proceeding, and that they are prepared to prove by documentary and other evidence, that the said Bhattacharj is the instigator of the present proceedings.

Plaintiff, in his rejoinder, disclaims all intercourse with Hurro Chunder Bhattacharj as regards this suit, and avers that the defendants made overtures for the settlement of his claim by instalments in two years, to which he would not assent. He adds also that the statement of the defendants that they are in affluent circumstances is false, inasmuch as they have been sued for debt and their property attached in execution of decrees.

The sudder ameen decreed the case in plaintiff's favor, on the grounds that the evidence adduced by him is superior to that brought by defendants both in amount and respectability.

On a review of the record, I find that the execution of the bond is established, and the desire of the defendants to repay the debt in two years by instalment, and that the plaintiff is in easy circumstances, and in position to make cash advances on loan. It is also apparent that the defendants urged the following issues in plea which they were unable to substantiate, namely, that Hurro Chunder Bhattacharj is the instigator of the present action, and that the plaintiff's means were circumscribed and altogether inadequate to admit of his lending money to the extent of his demand. I find, moreover, that the sudder ameen imposed a fine of 100 rupees each on two of the witnesses cited by the defendant, for non-attendance.

The points urged in appeal are, that the two witnesses in question are material to the issues pleaded by the defendants, and that the sudder ameen did not put in requisition all the legal means he possessed to enforce their attendance; that the local enquiry they prayed for, though ordered, had never been made; and that the

sudder ameen had decided the suit against them, because they had brought an action for extortion against him; that the bond had never been registered, and that people did not usually borrow such large sums of money without personal security or mortgage of property.

As the most important point mooted, I first directed my attention to the alleged suit for extortion, and discovered that one had been filed against the sudder ameen by the defendant pending the investigation of the present case when originally instituted as No. 55, and that in consequence the record was withdrawn from that officer's court by the orders of the judge, but restored to his file by the orders of the superior court, which also directed the suit for extortion to be made over to the moonsiff of the town of Burdwan for investigation and decision. The suit was eventually struck off on default. I cannot see much reason to find fault with the sudder ameen's proceedings in the matter of enforcing the attendance of the absent witnesses, as he appears to have used his best endeavours, and punished their recusance by the imposition of no inconsiderable fine. The non-completion of the local enquiry argued in favor of the appeal was, I rule, entirely ascribable to the neglect of the defendants' party to attend before the ameen, deputed for the purpose of conducting it by the judge of West Burdwan, on the requisition of the sudder ameen. The non-registry of the bond is a matter of little moment, and I am not disposed to give much heed to the argument finally adduced in support of the defendant's plea. From the foregoing considerations, and the fact of the suit No. 50, alluded to in the defendant's reply, as an evidence of fraud and collusion on the part of the plaintiff, having been dismissed on trial and the award affirmed in appeal, I see no reason whatever to interfere with the decision of the sudder ameen, and uphold the same, dismissing the appeal.

THE 21ST JUNE 1850.

Case No. 46 of 1850.

Appeal from the decision of Munmohun Baboo, Moonshiff of Khund Ghose, dated 26th of December 1849.

Puneera Beebee, (Plaintiff,) Appellant,

versus

Tumeezuddeen Chowdhree and others, (Defendants,) Respondents.

ACTION to recover amount of an instalment decreed by an award of arbitration, laid at Sicca rupees 96-14-18-2-2.

The substance of the plaint is that plaintiff's husband Busheeruddeen and Nusseeruddeen were brothers, living together, and joint proprietors of 1 anna 15 gundahs share of the estate of Shoomshur and others on a perpetual lease; that Nusseeruddeen married in the village of Khund Ghose, and lived there entirely, while plaintiff's

husband retained possession of the above mentioned property ; that Bushoeruddeen died in 1244, and was succeeded by plaintiff as heir at law; that after a while her nephew set up a claim to the property she inherited, and the matter was referred to arbitration ; that the arbitrators awarded her half of her former possessions, assigning the other half to defendant; that further disagreements took place between them on defendant's refusing to pay the costs of suit No. 219 and the debt he owed her ; that a second reference to arbitration was had, when it was settled that plaintiff should receive half the rents under a written agreement and defendant pay her Sicca rupees 80, on account of the other demands ; that defendant, not being able to pay that amount, executed an instalment bond, and in satisfaction thereof gave an assignment on the rent payable by Hurree Ghose, one of the tenants, from 1250 to 1259, at the rate of 8 rupees per annum ; that the said payments were withheld, and that she sued under the arbitration award, but the claim was nonsuited because the plaint omitted to mention dates and particulars of said award ; that she now claims under the same authority for five years' instalments due, together with the balance of the entire amount dependent on the bond.

Eteemunnissa Beebee, the wife of the defendant, avers that her husband settled the Shoomshur property on her by a deed of gift, and that she has disposed of it to one Zuhoor Ala.

The defendant Tameezuddeen takes exception to summary execution of an award of arbitration for personal property, as a proceeding in violation of the provisions of Regulation VI. 1813, and denies debt, arbitration, and every matter connected with the claim.

The moonsiff dismisses the suit, as well on its merits in some particulars as the legal exceptions taken thereto.

I think the moonsiff would have acted more consistently with established usage had he nonsuited plaintiff's claim at once on the legal objection ; but on a careful review of the case, I find that he has not entered into an enquiry into the subject matter of dispute between the litigant parties, as set forth in the award of arbitration, but simply tested the genuineness of the record. This, it is evident, has been found wanting.

It was argued in appeal that the above decision was a bar to the settlement of the existing differences between plaintiff and defendant in a regular suit ; but I deny this hypothesis, because it is abundantly clear that no enquiry whatever has been made into the merits of the points at issue between them, and that their adjustment is as legitimately practicable in a court of law as if the present proceedings had never been instituted.

The plaintiff appeals on the merits of a document avowedly at variance with the spirit and letter of the enactment of 1813, above

quoted, of Construction No. 472, and the terms of the decision passed by the superior court on the 3rd of February 1848, on the petition of Omroo Naik, and cannot for a moment be maintained. In concurrence with the award made by the moonsiff therefore, I give judgment in favor of the defendants; but in doing so rule that the dismissal of the plaint in its present form, is to be held as no bar to the institution of a regular suit for the settlement of the matters originally involved therein.

THE 26TH JUNE 1850.

Case No. 47 of 1850.

Appeal from the decision of Pearee Mohun Bonnerjea, Moonsiff of Kytee, dated 31st December 1849.

Ram Rae and others, (Defendants,) Appellants,

versus

Lukkhcepria Dasse, (Plaintiff,) Respondent.

ASSESSMENT of land, suit laid at rupees 56-4-14.

This case is reported at page 187 of the printed Decisions of the Zillah Courts for October and November 1849 (East Burdwan.) It was remanded for re-investigation for the reasons therein stated, and the result has been an appeal from both parties. The record of the suit shows that in conformity to the judge's order the moonsiff has assessed the land with an annual rent, and decreed judgment in respondent's favor, fixing the rate at rupees 39-4-3-15, for 18 beegahs, 5 cottahs, 10 chittacks. With this award, the respondent is dissatisfied, and to it the appellant takes exception.

The grounds of the appeal are two-fold, namely, the cancellation of the lease, or pottah, and the high and excessive rate of assessment imposed. With the former I have no authority to interfere, it having been the act of the judge by an award of court, though I must confess the question was a doubtful one and hard to solve, but the latter does not appear to me open to the objection urged, the rates assumed being both equitable and the ascertained rates of the village in which the land is situated, and moreover the same taken for the assessment of the other parcel of land under the lease of 1228, filed in this suit, to which neither party has taken exception.

In this view of the case, I see no reason to disturb the decision passed by the moonsiff, and affirm it accordingly.

THE 27TH JUNE 1850.

Case No. 54 of 1850.

Appeal from the decision of Pearee Mohun Bonnerjea, Moonsiff of Kytee, dated 31st December 1849.

Lukheepria Dasee, (Plaintiff,) Appellant,

versus

Ram Rai and others, (Defendants,) Respondents.

ASSESSMENT of land, suit laid at rupees 56-4-14.

This appeal is identical with the foregoing, but based on the opposite plea of the assessment being insufficient, and the rates assumed too low with reference to the quality of the land.

I have carefully considered the grounds on which the assessment has been completed, and repeat what I have above recorded that it appears to me just and equitable. I therefore affirm the award made by the lower court.

THE 27TH JUNE 1850.

Case No. 49 of 1850.

Appeal from the decision of Seetee Kaunt Singh, Moonsiff of Pothna, dated 31st December 1849.

Gopal Chunder Mullick, (Defendant,) Appellant,

versus

Guddadhur Mookerjea and others, (Plaintiffs,) Respondents.

ACTION to recover possession of land, with mesne profits, laid at rupees 58, 7 annas.

Plaintiff avers that Gora Chand Thakoor and others purchased a parcel of land at an auction sale, and agreed to give him a lease of 3 beegahs 16 cottahs at rupees 7-14-8, in conformity with which he executed an agreement on the 13th of Bysakh 1251. He remained in possession till 1254, when he was ousted and brought an action for dispossession under suit No. 315, which was struck off the file on the 29th of January 1848, on account of his inability to file the lease and quittances.

Defendant maintains that of the land in dispute the portion situated to the north of the Dogurria tank, consisting of 2½ beegahs, is his property, and not plaintiff's, and included in his farm of the village of Kolkol. He avers, moreover, that, on 25th Assin 1253, he purchased 2 beegahs 4 cottahs of rent-free land from Doorga Churrun Bhattacharj, of which plaintiff has contrived to lay claim to 1 beegah 6 cottahs, by including it within the limits of his defined boundary.

Plaintiff files a supplementary plaint, releasing certain parties from the operation of his suit, alleging, as his reason, that since its institu-

tion they had been named as subscribing witnesses to an exhibit fabricated by the defendant in support of his plea.

The moonsiff records an award in plaintiff's favor, judging the pleas advanced by defendant utterly untenable.

The record shows that when the defendant was called on to file the proofs, necessary to the validity of his title, from the collector's office, he admitted that he had got none, and was, moreover, unable to produce the lease for $2\frac{1}{2}$ beegahs alleged as appertaining to the Kolkol farm. It is true he files a deed of sale for the rent-free land and gets it in a manner attested by four witnesses, but the instrument is a suspicious looking document, and bears the impress of fabrication in a remarkable manner, and the deposing witnesses are little better than professional oath-mongers, the whole worthless as a ground of claim in the avowed absence of the taidad, or register of rent-free grants, from the collectorship, the only substantial title to land held exempt from the payment of revenue. The plaintiff's claim on the other hand seems just and well founded, and established by the documentary and oral evidence adduced in support, among which are the village accounts attested by the agent of the landlord and another respectable witness, and the local investigation made by the cazee of the division.

The questions argued in appeal were, first, the incompetency of the moonsiff to receive and determine the suit, it having reference to proprietary right in a rent-free tenure; secondly, its susceptibility to nonsuit on account of plaintiff having caused defendant's witnesses to be made parties to the cause; and thirdly, the informality of the moonsiff's proceedings in accepting a supplementary plaint in furtherance of the above object.

Referring to the first point, I rule that the moonsiff was fully competent to determine the suit, because defendant filed no exhibit the validity of which required to be, or was capable of being, tested by the records of the collectorate. I reject the second, as it is very clear by the precedent quoted, (decision of the Sudder Dewanny Adawlut *in re* Ram Lochun Goh, plaintiff, *versus* Gooroopershad Goh and others, defendants, bearing date 11th August 1847,) that fraud and unfair dealing on the part of the plaintiff must be shown before recourse can be had to the expedient urged, whereas in the present instance the very opposite is the case, and deception altogether chargeable on the defendant; and I hold, with advertence to the third, that the moonsiff was perfectly justified in receiving and acting on the supplemental plaint, intended as it was to adjust a point material to the suit, and, by counteracting fraud and a dishonest plea, calculated to promote the interests of justice and truth. Under these circumstances I affirm the award of the court of first instance, and dismiss the appeal, without summoning the respondents.

THE 29TH JUNE 1850.

Case No. 50 of 1850.

*Appeal from the decision of Seetee Kaunt Singh, Moonsiff of Pothna, dated 29th December 1849.*Kasheenath Gooin and others, (Plaintiffs,) Appellants,
versus

Ramnarain Banerjea and others, (Defendants,) Respondents.

REVERSAL of a summary award under Act IV. 1840, action laid at rupees 95-6-2.

The substance of the plaint is, that the defendants sold two parcels of birmotter land, situated in the village of Jiekishenpore, to plaintiff's father on several dates and at the undermentioned prices, viz., on the 17th of Phalgun 1240, 1 beegah for 12 rupees, and on the 9th of Bhadoon 1243, 3 beegahs, 17 cottahs for 43 rupees. On being ousted of 3 beegahs, 10 cottahs, 8 chittacks of this land in Assar 1253, plaintiffs instituted proceedings under Act IV. 1840, at the court of the deputy magistrate of Boodbood, but the case was dismissed on the 23rd March 1847.

The defendant Ramnarain denies the sale, and affirms that 8 beegahs, 4 cottahs of the land in question were leased to the plaintiff for four years, *i. e.*, from 1248 to 1251, at 9 rupees a year, in satisfaction of an outstanding claim of 36 rupees. He alleges, moreover, that the plaintiffs have brought this suit on an insufficient valuation, to the prejudice of the state revenue on account of stamp, and its own admissibility on the score of law and usage.

Bunmalee Hajera, another defendant, corroborates the above, and plaintiff's rejoinder reiterates the grounds of the plaint.

Although the moonsiff satisfies himself, through an enquiry held by the cazee of the village, that the defendants' allegation, that the suit has been brought on an insufficient valuation, is false and groundless, he records judgment against the plaintiff.

I am dissatisfied with this award, because the moonsiff has failed to take evidence on two issues very material to the suit, namely, the conditional lease and the fact of there being an unsettled account between the litigant parties, out of which the lease emanated. The evidence adduced by the plaintiff, both oral and documentary, is certainly defective, and displays many incongruities; but it is urged in appeal that a local enquiry is wanting, which might possibly elucidate the case, and place matters on their proper footing. I think the suggestion judicious, and, deeming the judgment in its present form incomplete and unsatisfactory, reverse the same, and remand the suit for re-investigation, with directions to the moonsiff to order a local enquiry in the presence of unprejudiced parties, and calling on the defendants for documentary proofs both of the conditional lease and unsettled account, and, taking such further evidence as the plaintiffs may bring before him, decide the case on its merits.

ZILLAH WEST BURDWAN.

PRESENT: H. C. HAMILTON, ESQ., OFFICIATING JUDGE.

THE 1ST JUNE 1850.

Case No. 7 of 1849.

*Appeal from the decision of Baboo Chunder Seekur Chowdry, Principal
Sudder Ameen of West Burdwan, dated 19th March 1849.*

Maharajah Dheeraj Rajah Mohtaub Chund Bahadoor, Zemindar of
Pergunnah Burdwan, &c., (Plaintiff,) Respondent,

versus

Ram Kumul Mookerjea, inhabitant of Malparah, pergunnah Pownan,
Chowkec Mahanud, zillah Hooghly, (Defendant,) Appellant.

SUIT for balance of rent after deducting sale proceeds on account of a sale held on the 20th Aughun 1241 B. S., laid at Sicca rupees 491-15, principal, and Sicca rupees 491-15, interest, total Sicca rupees 983-14 = Company's rupces 1049-7-6, *plus* interest.

Plaintiff states that lot Oolaye was held in putnee by Essur Chunder Mookerjea, at a jumma of rupees 3159-9, and was sold at the sales of 1240 B. S., at rupees 2100, when Ram Kumul purchased it. Defendant was in possession, but he never signed any kubooleut or tendered any security. The first six months' rent of 1241 B. S. was demanded from defendant to the extent of rupees 1808, *plus* interest rupees 37-14-15, and, not paying it, the sale took place on the 20th Aughun 1241, for a balance of rupees 1877-15. Plaintiff bought in the estate, and, after deducting fees, &c., he sues as above, and applied for the attachment of some cash under Regulation II. 1806, in the Midnapore collectorate.

Defendant replies that he never purchased the lot nor was put in possession; he never paid the fees; he was a minor at the time, as can be proved; he lives in chowkee Suleemabad, mouzah Jowgong, zillah East Burdwan, he never held any talook or traded, and could never have procured rupees 2100; the kubooleut and security were never executed, as admitted by plaintiff, hence how can it be said that he, defendant, purchased the lot? Plaintiff has irregularly produced witnesses to prove that he, defendant, lives at Malparah: mouzah Jowgong is his hereditary property, and in Malparah his (defendant's) uncle resides, and the latter does not live in mouzah Rhytiah, &c., hence this case cannot lay against him, &c.

The rejoinder was filed by the plaintiff, and a supplemental plaint in correction of mistakes also given in by him.

On carefully going through the case, I find that the proceedings of the principal sudder ameen are in more instances than one totally irregular.

Plaintiff appears to have petitioned on the 26th of March 1847, to the effect that defendant was playing tricks, and was wishing to make out that he did not live at the place specified, he (plaintiff) therefore stated that he could prove that defendant did live at mouzah Malparah as alleged. Upon this and on the same day proof was called for, although defendant had not been served with any notice in the matter of this action having been brought against him. On the 7th April 1847 lists of witnesses were filed in support of plaintiff's petition, and their evidence taken *ex parte*.

Again, on the 26th of April 1847, a further petition was given by plaintiff, stating that defendant was serishtadar in the abkaree superintendent's office at Midnapore, and that the defendant had there deposited rupees 500 in cash, as security for his good conduct. The principal sudder ameen thereupon directed the money to be attached, and it was attached conditionally by the abkaree superintendent's roobakarree, dated the 6th May 1847.

After this notice was sent to the judge of Midnapore to be served through his court on the defendant on the 12th of May 1847, but he appeared without receiving it.

Defendant's reply was filed, and plaintiff was directed to expedite his rejoinder, and on the 5th August 1847 the case was heard, and an eight days' ishtehar issued under Section 10, Regulation XXVI. 1814, to enable the parties to be prepared with their proofs, &c.

On the 27th August 1847 various interrogatories were put to the pleaders on both sides, and various documents *specified in detail* were called for by the court.

Then there is a supplemental plaint filed on the 22nd of March 1848, and the case proceeded.

After the pleadings were completed, leaving out intermediate irregularities as above pointed out, no notice appears to have been served under Section 6, Regulation IV. 1793, the points at issue raised in bar of the hearing of this suit were never disposed of under Section 10, Regulation XXVI. 1814, the parties were called upon to produce *specified documents* in opposition to Circular Order No. 55 of the 13th of October 1848, and the suit was decided without any notification being stuck up in court under Section 12 of the same enactment; due regard at the same time not having been paid to Circular Order of the 13th September 1843.

Hence I cannot proceed any further with this suit, and I have no alternative but to remand it to the principal sudder ameen. Be it therefore

ORDERED,

That the appeal be decreed, the decision of the lower court reversed, and the case be remanded for trial *de novo* according to law. Value of stamp paper to be refunded in the usual way.

THE 1ST JUNE 1850.

Suit No. 19 of 1848.

Appeal from the decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated the 4th September 1848.

Rajeebsurmah Nemooah and others, (Plaintiffs,) Appellants,

versus

Khyratee Khan, heir of Musst. Ameerun Beebee, deceased, and others, (Defendants,) Respondents.

THE appeal was admitted by the judge on the 7th November 1849.

Suit to recover rent in cash and rice from 1247 to 1250 B. S., laid at rupees 558-13-2, with interest.

Plaintiffs state that mouzah Chilkah is their khirajy lakhiraj, and that Musst. Ameerun was the mocrurreedar or pottahdar. Plaintiffs' ancestors settled the estate with Musst. Ameerun, agreeably to her kubooleut, dated the 9th Assar 1222 B. S., at an annual rent of rupees 44-6-19 in cash and 44 map, 2 sullees, and 10 seers in rice. In this kubooleut there was a condition that plaintiffs should hold 2 aries of land as "nijjote;" if they cultivated it "nij," a deduction was to be made in the rent of rupees 6-14, and 12 maps 4 sullies of rice, and if they did not do so then Musst. Ameerun was to pay them their jumma in full. The above kubooleut and its counterpart pottah were executed by Punchanund Roy, karpurdauz, on the part of Ameerun. Plaintiffs allege that they did not "nij" cultivate the land, and Ameerun was in possession of it, paying her rent at the full jumma and receiving dakhillas. In 1247 B. S., she gave a "burat" for rupees 30, in part of her rent to the talookdar, on account of their (plaintiffs') *punchokee* jumma, and from 1247 to 1249 B. S. she gave to plaintiffs in addition some rice. After this, Musst. Ameerun died, and on the 13th Aughun plaintiffs state they issued an istihar for her heirs to come forward. No one appeared, and plaintiffs made arrangements to cultivate the mouzah, whereupon Khyratee defendant, calling himself the heir, gave out that he held the mocrurree of the mouzah at a jumma of rupees 39-5-1, and rice 26 maps, 7 sullees, 10 seers, and in 1250 B. S. he went and collected all the rents. After this Khyratee instituted a suit for rent, No. 5, against plaintiffs, urging that he had only received rupees 31; and by the decree it was ruled that Khyratee was to be retained in possession; but he was to pay the jumma specified in the kubooleut of 1222 B. S. Plaintiffs now bring this action against the heirs of Ameerun for the recovery of their rent at the above jumma, less intermediate collections, filing an account of their demand with interest.

Khyratee defendant replies that Parbuttee Churn Nemooah, one of the sharers, should have been made a party to this suit; that execution No. 29 of decree No. 5 has been taken out from 1247 to 1250 B. S., and enquiries are in progress regarding the wasilat, &c., so that

the suit for 1250 B. S. cannot stand, he refers to suit No. 872 in which plaintiffs were claimants, and wherein they stated they had received the rents of the land from the ryots on account of 1250 B. S., exclusive of their nijjote lands. He urges that plaintiffs have been proved to have been in possession of the 2 aries equal to 15 beegahs of land, alluded to in their plaint, antecedent to 1250 B. S., and wasilat on that account are under enquiry, that the rent of this parcel is deducted in the kubooleut, and in 1227 B. S. plaintiffs sued for the rent of the lands held by Musst. Ameerun less due on the 2 aries, and they cannot sue inclusive thereof. Independent of all this, on the 4th Assar 1243 B. S., plaintiffs, it is alleged, borrowed on various dates, separately, sums of money granting bonds for the same to defendant, these transactions having occurred between the years 1243 and 1252 B. S.; and plaintiffs have pledged by "rookas" the rent of their village both in cash and rice to defendant, and hence how can they sue him? Plaintiffs have not stated how they have received their rents from 1243 to 1247 B. S., and have brought this action to set aside the decrees, &c.

In the jowaub-ul-jowaub, plaintiffs say that it was not necessary for Parbuttee Churn to have joined with them in this action: that mouzah Chilkah, less the "khureedah" land of Benode Banerjee, is all settled with Musst. Ameerun, and they have deducted for the period they nij cultivated their land; that from 1248, or the year following the revenue suit, Musst. Ameerun was in sole possession of the entire mouzah and paid the full jumma according to the kubooleut; they have referred to all particulars connected with suit No. 872, and declare that the word "summeet," সম্মেত has been written and altered for the word "sewayee" সেওয়ায় in the claim petition in the deputy collector's office; they repudiate the bonds which, defendant avers, were given to him by plaintiffs, &c.

In the "rudjowaub" defendant denies that any land was ever sold in mouzah Chilkah to Benode Banerjee, and had it been so, mention of it would have been given in kubooleut of 1222 B. S., &c.

Parbuttee Churn, on the 29th March 1847, replies, and supports plaintiffs by a petition.

On the 8th of May 1847, the case was heard and an eight days' notification issued under Section 12, Regulation XXVI. 1814, for the parties to be prepared with their exhibits, &c.

The rudjowaub was filed on the 19th May 1847, and on the 31st idem a proceeding was held and various documents were called for.

It is needless to go further into this case, for the decree owing to several irregularities cannot stand.

JUDGMENT.

After the completion of the pleadings no notice under Section 6, Regulation IV. 1793 was issued: the issues in bar of the hearing

of the suit were not disposed of under Clause 2, Section 10, Regulation XXVI. 1814, the point or points to be established respectively by plaintiffs and defendant were never recorded under Clause 3, Section 10, Regulation XXVI. 1814; the notification required to be stuck up in court under Section 12 of the same enactment, after the conditions specified in Section 10 have been fulfilled, was never issued; and due regard was not paid to the stringent orders contained in Circular Orders of the 13th September 1843: hence, the case must be remanded, and the court should pay particular attention to Circular Orders No. 55 of the 13th October 1848, and No. 5, of the 8th of May 1850, on re-trying the case.

ORDERED,

Therefore, that the appeal be decreed, the decision reversed, and the case be transferred for re-trial to the sudder ameen (as one has been recently appointed in this zillah) with reference to the foregoing observations. Value of stamp paper to be refunded in the usual way.

THE 1ST JUNE 1850.

Appeal No. 20 of 1848.

Appeal from the decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated the 4th September 1848.

Khyratee Khan, Mocurrurcedar of Mouzah Chilkah, (Plaintiff,) Appellant,

versus

Kaleepershaud Banerjea, Oozurdar, Rajeeb Surmah, and others, (Defendants,) Respondents.

SUIT to obtain the reversal of an order issued in a claim case connected with the execution of a decree No. 29, also for possession with "tusurruffat," altogether laid at rupees 65-1-0-1.

The appeal was admitted by the judge on the 7th November 1849.

This case is mixed up and connected with appeal No. 19 of 1848 just now decided. It has its origin in the summary suit case No. 5, referred to therein, and on its being carried into execution, suit No. 29, against defendants, objections were started, and it was made to appear that defendants' father, Benode Banerjea, had purchased from Rajeeb Nemooah, &c., defendants, the plaintiffs in suit No. 19, a parcel of land covering an area of 1 arie, 37 wans, equal to beegahs 13-1, for the sum of rupees 225, during the year 1220 B. S., or antecedent to the date of the kubooleut executed by plaintiff's ancestor Musst. Ameerun in defendants' favor in suit No. 19. This claim was upheld in appeal by the judge summarily, and plaintiff now applies for the reversal of this order and maintains

that this said parcel of beegahs 13-1 is included in the "nijjote" of the 2 aries mentioned in case No. 19.

Kaleepershaud Banerjea, defendant, replies that the land at issue was purchased in 1220 B. S., before plaintiff's ancestor obtained this mocrurree.

Rajeeb Nemooah and others support the defendants.

On the 28th June 1848, an eight days' ishtehar was issued, but under what regulation does not appear, for the parties to be prepared with their proofs.

On the 18th July 1848, after various interrogatories certain specified documents were called for and ten days given for their production, but the several rules which require to be observed under Sections 10 and 12, Regulation XXVI. 1814, have never been attended to, and the principal sudder ameen, referring to his decree in the other case, dismissed this suit.

JUDGMENT.

The proceedings of the principal sudder ameen being irregular, I transfer this case for trial *de novo* to the sudder ameen of the district, with reference to my observations in appeal in No. 19 of 1848, and decree the appeal, reversing the decision of the lower court. Value of stamp paper to be refunded.

THE 4TH JUNE 1850.

Suit No. 37 of 1849.

Appeal from the decision of Baboo Gopee Kishen Banerjea, Moonsiff of Kotulpoor, dated 15th January 1848.

Ramdhun Kulya, (Plaintiff,) Appellant,

versus

Nurrohurree Ghose, Neemye Arree, and Nundram Arree,
(Defendants,) Respondents.

SUIT to recover the balance of rupees 20, *plus* interest rupees 2, total rupees 22, due on a bond for rupees 25, dated the 25th of Aughun 1254 B. S.

Plaintiff states that Nurrohurree borrowed 5 rupees, Neemye 17 rupees, and Nundram 3 rupees, by a bond on the above date, promising to repay the money in Phalagoon 1254 B. S. Nurrohurree paid rupees 3, Neemye rupee 1, and Nundram rupee 1, altogether rupees 5, in part of the 25 rupees, and plaintiff now sues for the remainder *plus* interest.

Neemye defendant replies that he never borrowed the money, or gave the joint bond to plaintiff. The larger balance is made to appear against him, the dates of payment are not specified, the defendants are of different castes, the other two are his enemies, and why should he have joined in a bond with them? Plaintiff is the ijaradar

of his village and endeavoured to oust him (defendant) from his jaghire and other lands, which led to a suit being brought by him against plaintiff, and the joint magistrate of Gurbettah ordered possession to be restored to him (defendant,) which has made plaintiff get up this suit against him to ruin him, &c.

No jowaub-ool-jowaub was filed, and the other two defendants did not appear.

The moonsiff cannot believe the evidence of plaintiff's witnesses, they live in different villages and not where the bond was executed, one is plaintiff's gomashtha, and the presence of the other two at the time of execution is suspicious; plaintiff brought his witnesses without summons and has evidently tutored them; both parties reside in this chowkee and yet the stamp paper is bought and brought from another chowkee, and was sold to a stranger one month before the bond was written: the other two defendants have not appeared, and the writer of the bond is one of these, Nurrohurree, who has been kept out of the way purposely. The defendant Neemye is a poor low caste man, and there is no reason given why he should have been the principal borrower, and this too without any security. Defendant has proved that he brought his case for possession against plaintiff in the joint magistrate's court at Gurbettah on the 12th June 1848, and obtained a decree on the 8th July 1848, whereas plaintiff has brought this action on the 22nd of September following, evidently, the moonsiff thinks, through illwill and in order to ruin defendant: he, therefore, not crediting the bond or plaintiff's witnesses, dismisses the case, with costs.

Plaintiff appeals, insisting he has proved his bond sufficiently under Section 15, Regulation III. 1793. The witnesses all live close together, he was at liberty to produce his witnesses without issuing subpoenas, he brought 3 out of 5, and the others should have been called, &c. &c.

JUDGMENT.

I fully concur in the opinion of the lower court, and consider the bond to have been prepared, and the case got up to bring defendant into trouble and to ruin him. No reason was originally assigned for what purpose the money was borrowed, nor in what way three individuals, two of them being brothers, and the third one of another caste, should have jointly executed the alleged bond; the writer of the bond, Nurrohurree Ghose, one of the defendants, having been made a defendant to prevent his giving evidence and kept out of the way purposely, while the other defendant has been made a debtor in only a very small sum to give a creditable appearance to the transaction, as this man Nundram is Neemye's, the prosecuted defendant's brother. A feud and enmity in consequence of the order defendant obtained against plaintiff have been proved; and whilst

these squabbles were going on it is not likely a bond would be executed between the parties without some cause shown for it. Under the foregoing circumstances, I see no reason for interfering with the decree of the lower court. I hereby confirm it, and reject the appeal.

THE 4TH JUNE 1850.

Appeal No. 24 of 1849.

Appeal from the decision of Baboo Bisheshur Chuckerbutty, Town Moon-siff of Bancoorrah, dated 28th December 1848.

Raj Chunder Roy, (Plaintiff,) Respondent,

versus

Radha Gobind Singh Baboo, (Defendant,) Appellant.

SUIT for rent for various years, laid at rupees 15-13-3-2.

Plaintiff states that Rajadhur Roy's bugceeh was his ancestral lakhiraj property, and on its being resumed defendant obtained the lease of it from Government and was in possession. In March 1843, plaintiff and the other sharers settled separately for the estate and paid in the Government revenue; these separate settlements were however cancelled, and an enhanced jumma of rupees 83-6-2 on beegahs 70-14-8 formed, the sharers engaging for it at the half jumma rate; plaintiff's share was one anna 12 gundahs and his jumma rupees 8-18-3, defendant having been in possession from Cheyte 1252 B. S., to Jeyte 1255 B. S., when he resigned, plaintiff has demanded it from him, but he will not pay, consequently this action is brought as follows:

Plaintiff's share on account of 1252 B. S.,.....	Rs.	0	10	16	0
" " " 1253 "	"	8	1	8	3
" " " 1254 "	"	8	1	8	3
Total Rs. 16 13 13 2					
Interest, 1 7 10 0					
Grand total, Rs. 18 5 3 2					
Less paid by Obeychurn Mookerjee, 2 8 0 0					
Balance, Rs. 15 13 3 2					

Defendant replies that he is not bound to pay plaintiff according to his alleged share without the consent of the other sharers, he was not in possession as a farmer, and the alleged was not the sole payment. The deputy collector settled beegahs 68-8 with him, excluding Kalee Mundle's land and jumma, at a jumma of rupees 38-7-9, he paid his revenue, but this settlement was cancelled, and a fresh

one made at the end of 1252 B. S., with a jumma of rupees 80-10-2, which the shareholders agreed to: defendant's gomashtha paid plaintiff's rent due for 1253 and 1254 B. S., or rupees 12-8, and received dakhillas. Independent of this plaintiff has been paid rupees 2-8 by Obhoychurn, and the other sharers have received their rents and granted dakhillas. Defendant denies that he owes any rent to plaintiff, and urges that plaintiff has included in his demand the rent due on Kalee Mundle's land, he holds dakhillas, &c.

In the jowaub-ool-jowaub filed by plaintiff he urges that the shares of all the shareholders were adjusted and settled by the revenue authorities: his share was fixed at 1 anna 12 gundahs as entered in the umulnamah, an eight anna sharer sued defendant separately for his rent, no objections were started, and the case was amicably adjusted; defendant has not paid his rent to, or received any dakhillas from him, if he produces any they are false, and if he had really paid his rent how came defendant to wish to settle the case with him for rupees 12, at Bancoorah, as he can prove?

The moonsiff is of opinion that plaintiff's share is sufficiently established by the copy of the umulnamah, which has been filed by plaintiff, and there is no necessity for the other sharers joining or being concerned in the suit. No other payments beyond the rupees 2-8 have been proved; and as defendant was in possession, he must pay plaintiff his share of rent on his 1 anna 12 gundahs share, as his name is entered in the jumma-bundee papers as the ryot at a jumma of 80-14-7. Defendant, though frequently called upon to produce his dakhillas, failed to do so. The moonsiff consequently adjusts the accounts and the interest, and decrees the case in plaintiff's favor to the extent of rupees 1-6-6, besides costs.

Defendant appeals, saying that the delay which occurred was unavoidable, he endeavours to explain it: plaintiff has not proved his balance, no enquiry has been made into Kalee Mundle's land: the several other sharers should have joined with plaintiff, his share is specified, &c.

JUDGMENT.

I consider the moonsiff's decree to be good, and no sufficient reason has been advanced for interfering with it. Defendant was called upon on less than four times, viz., on the 18th and 27th of November 1848, and on the 16th and 28th of December 1848, for his dakhillas in proof of his alleged payments, but he never produced them; besides which, plaintiff is fully entitled to his share of his rent from defendant, agreeably to the share specified in the umulnamah granted by the revenue authorities, which said share and umulnamah must stand good until the other sharers object to it, or it is reversed by any civil court. Under the foregoing circumstances, I reject the appeal, and uphold the decision of the lower court.

THE 4TH JUNE 1850.

Suit No. 27 of 1849.

*Appeal from the decision of Moulvee Abdool Uzeer, Moonsiff of Oundah,
dated 28th December 1848.*

Guday Tauttee, (Plaintiff,) Appellant,

versus

Adit Gungoolee, (Defendant,) Respondent.

SUIT to recover rupees 49, principal, and rupees 10-12-10, interest, altogether rupees 59-12-10, due on a bond, dated the 3rd Bhadoon 1253 B. S., which, it is alleged, defendant gave to plaintiff, promising to repay him in the month of Chyete 1253 B. S.

Defendant repudiates the borrowing and execution of the bond : plaintiff has not the means of advancing the money, he never lent him any thing, and this suit has been brought through spite, &c.

On the 27th of December 1848, plaintiff presented a petition, pointing out various matters which is altogether irregular, and the petition should not have been noticed in the decree under any circumstances, as it forms no part of the pleading.

Plaintiff produced his bond and four witnesses to prove it; but the moonsiff does not believe their evidence and vitiates it, because one of them, Seeboo Mundle, the writer of the bond, tells a different story from the others, and says he never saw the cash made over to defendant or defendant sign the bond, consequently plaintiff's case is dismissed, with costs.

In appeal, it is urged by plaintiff that he has sufficiently proved his bond under Clause 15, Regulation III. 1793, defendant has not established the existence of enmity between them, that further enquiries should have been made, &c.

JUDGMENT.

I have carefully gone through the evidence and have arrived at the conclusion that Seeboo Mundle, witness, has been bought over by defendant, and has given his evidence to damage plaintiff's case. Defendant's witnesses say that Seeboo offered to settle the matter for 7 or 8 rupees, which would lead to the inference that there was something in dispute between plaintiff and defendant, and plaintiff's other witnesses are clear in their depositions in regard to the borrowing and the execution of the bond; and as plaintiff can call respectable people to further prove his case, I think he should have an opportunity of doing so.

ORDERED,

Therefore, that the appeal be decreed, and the case remanded for re-trial to the lower court, and the provisions contained in the Circular Order of the 8th May 1850, No. 5, must now be attended to. Value of stamp paper to be refunded.

THE 5TH JUNE 1850.

Suit No. 16 of 1849.

*Appeal from the decision of Baboo Chunder Seekur Chowdhry, Principal
Sudder Ameen of West Burdwan, dated 29th June 1849.*

Musst. Dossee Monee Deby, putnee talookdar of lot Khujoorree,
(Plaintiff,)

versus

Juddoomundul Goshein, (Defendant,) Appellant.

SUIT to recover possession of 33 beegahs of land, appertaining to mouzah Nubjowbunpoor, which was formerly a portion of plaintiff's mal estate and is now held by defendant as a punchokee lakhiraj belonging to mouzah Nerainpoor, laid at rupees 297.

Plaintiff states that he purchased lot Khujoorree at the putnee sales in 1252 B. S. and obtained possession. Defendant holds a parcel of land as punchokee lakhiraj in mouzahs Nubjowbunpoor and Nerainpoor, it was measured off and identified by the resumption officers, and the quit-rent jumma has been always paid to the talookdar of lot Khujoorree. Besides this punchokee lakhiraj there are 33 beegahs of his (plaintiff's) mal land, situated to the east of mouzah Nerainpoor belonging to mouzah Nubjowbunpoor: the rent from this parcel was always paid by the ryots to the former talookdar, but defendant, who is in possession, declines to do so; plaintiff therefore sues him for the rent at the rate of rupees 16-8 per anhum, and bring his action at eighteen times' value, or rupees 297, &c.

This plaint was forwarded to the deputy collector for report under Regulation II. 1819, on the 5th of July 1847.

Defendant filed his reply in the deputy collector's office on the 24th of September 1847, to the effect that his ancestors held a punchokee lakhiraj in Nerainpoor, &c. at a jumma of rupees 11 payable to the zemindar, that the tenure was brought under enquiry before the resumption officers, whereupon Essanchunder Banerjea, plaintiff's nephew, laid claim, but it was released: there are 12 beegahs in Nerainpoor, and the old ryots, Punchye Patur and others, have always paid their rent from it to him, defendant. Defendant says he has not possession of plaintiff's 33 beegahs, and has nothing to say to it. Plaintiff collects the rent therefrom through his own ryots, and defendant has never put them up not to pay him. Plaintiff's brother-in-law owes him (defendant) a grudge, and has brought this action against him.

In his jowaub-ool-jowaub, plaintiff says he can prove that the disputed land is distinct, that the defendant is in possession and will not pay his rent, &c.

The deputy collector returned the case with his roobakaree, dated the 27th January 1848, because defendant admitted that the disputed land was the revenue land of plaintiff, though he had no concern with it, and after this list of witnesses was filed and an ameen deputed by the civil court to enquire into the matter on the 28th of February 1848; objections were offered to the first ameen's papers, which were filed on the 11th July 1848, in consequence of which a second ameen was ordered out, and he tendered his papers on 6th March 1849.

JUDGMENT.

I cannot, I find, proceed with this case, for no proceedings were held by the lower court under the provisions contained in Sections 10 or 12, Regulation XXVI. 1814. I therefore, without going into the merits, decree the appeal, and remand the case for trial *de novo*, according to the aforementioned regulation. Value of stamp paper to be refunded in the usual way.

THE 5TH JUNE 1850.

Suit No. 18 of 1849.

Appeal from the decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated the 10th July 1849.

Beeshoroop Goshein, (Plaintiff,) Appellant,

versus

Brijomohun Singh Thakoor and others, (Defendants,) Respondents.

RECOVERY of a balance due on a bond, principal rupees 1675-8-10, interest rupees 1765-8-10, total Sicca rupees 3531-1, or Company's rupees 3765.

Plaintiff states that Radhamadhub Singh and Kishen Singh Koer (deceased) became indebted to him by a decree No. 1405, execution of which by suit No. 9 he carried out against them, to the extent of rupees 3588-8-13, which was reduced by payments in various ways to rupees 2585, and for this last sum they executed in plaintiff's favor, on the 14th of Aughun 1239 B. S., a kistbundy, promising to repay the amount between 1240 and 1246 B. S., or at the rate of rupees 185, in 1246 B. S. In the body of the said kistbundy various individuals are stated to have bound themselves to the payment of specified sums between the years 1240 to 1246 B. S., aggregating rupees 400, and plaintiff received separate kubooleuts from them respectively according to their agreements,—Radhamadhub Singh and Kishen Singh agreeing to make good any sums which might not be eventually realized. Plaintiff further states that he has received from several of these individuals, by bringing actions against them and in other ways, rupees 819-7-10, which he has

deducted from the total sum entered in the kistbundy, so that there remains rupees 1765-8-10, besides interest, unliquidated, and as he cannot obtain it, he brings this action against the heirs of the parties, who executed the kistbundy, as also against the several individuals and their heirs, who are mentioned therein as having pledged themselves to make good certain sums agreeably to their separate kubooleuts and "burrats," &c.

Brijomohun Singh and others, defendants, replied on the 7th of January 1847, urging that the suit could not proceed as various individuals, all of whose transactions with plaintiff were distinct, had been sued together, including in his action the heirs of Radhamadhub Singh and Kishen Singh; that the sums entered in the "burrats" were different, the kubooleuts were separate, some of the parties tendering them lived in one place, some in another, &c., that they (defendants) were minors when the kistbundy was written; that plaintiff has been paid large sums by different people which have not been accounted for, that his (plaintiff's) payments from the parties under engagement to him never ceased, as alleged by plaintiff, in consequence of the lands having been resumed by Government, that they (defendants) have not interfered with plaintiff or his "burrats," that until plaintiff specifies distinctly who have and who have not paid he cannot sue on the kistbundy, and that no mention of those who have resigned their lands has been made, &c.

Rammohun Mozoomdar, defendant, replies briefly to the effect that the mouzahs, lands, burrats, kubooleuts, &c., are quite distinct, but they have been all jumbled together in the plaint, &c. so that the action cannot proceed, &c.

Bholanath Singh, defendant, says he has paid up agreeably to his kubooleut and "burrats," &c.

Juggernath Mundle, defendant, heir to one of the individuals, who gave a "burrat" to plaintiff, says he knows nothing about it, &c.

In his jowaub-ool-jowaub, plaintiff persists in the correctness of his plaint, declares he has particularized all collections, that the heirs of the parties giving the kistbundy, as also of those who executed kubooleuts or burrats are responsible, &c.

The proceedings of the lower court are manifestly irregular, and I am unable in consequence to enter into the merits of the case. A proceeding was held on the 2nd of March 1848, directing the issue of an 8 days' ishtehar under Section 10, Regulation XXVI. 1814, as one of the defendants had appeared and plaintiff had filed his jowaub-ool-jowaub. This proceeding was irregular, as no ishtehar is required by the section quoted, and as soon as the pleadings were completed the court should have served a notice under Section 6, Regulation IV. 1793. Again, there is another roobakaree held, bearing date the 30th March 1848, agreeably to the same or 10th Section, but the issues raised in bar of the hearing of this suit have never been properly disposed of under it, nor were the point or

points to be established under the same section and enactment recorded by the lower court. On the contrary, documents in detail were called for, and, after evidence had been taken and a precedent filed, the principal sudder ameen, on the 16th November 1848, gave it as his opinion that the suit could proceed, and by his roobakaree of that date further documents were called for, &c. Eventually the case was heard and decided without reference to Section 12, Regulation XXVI. 1814, and the lower court dismissed it, urging that it was irregularly brought, &c.

Referring then to Circular Order of the 8th May 1850, No. 5, and the decision of the Sudder Dewanny Adawlut mentioned therein, I have no alternative but to remand this case for re-trial.

ORDERED,

Therefore, that the appeal be decreed, and the case be remanded for trial *de novo* according to the foregoing observations: value of stamp paper to be refunded in the usual way. Respondents, having appeared without notice, will pay their own costs in appeal.

THE 6TH JUNE 1850.

Suit No. 39 of 1849.

Appeal from the decision of Baboo Mohun Lal Panday, Moonsiff of Burjoorah, dated the 18th January 1849.

Saduck Mundle, Plaintiff,

versus

Mohun Doss and others, Defendants.

SUIT for the recovery of rupees 29, principal, and interest rupees 16-11-6, total rupees 45-11-6, being the balance due on a bond, dated the 11th Bhadoon 1250 B. S.

Plaintiff states that Shadhoochurn Doss, (deceased,) Gopal Doss, and Mohun Doss, squared their outstanding accounts with him, whereby rupees 34 was found to be the balance due by them to him; for this sum they executed a joint bond on the above date, promising to pay it up with interest in the month of Kartikh 1250 B. S. In the month of Poos following, Mohun Doss paid rupees 5; and the residue not having been liquidated, plaintiff sues Gopal and Mohun and the heirs of Shadhoochurn.

Mohun Doss, defendant, in his reply, acknowledges to have executed the bond jointly with the other two, but urges that he paid on several occasions rupees 36, which plaintiff has not set forth in his plaint, he adds that his (defendant's) son, Tarachand, has been made one of Shadhoochurn's heirs, which is a flaw in the action, as Tarachand is a minor, or about 11 years old, and not the heir.

Gopal Doss, defendant, denies every thing: he could write as he can prove, and yet his signature is not to the bond, &c.

The heirs of Shadhoochurn support Gopal Doss.

In his rejoinder, plaintiff urges that if Tarachand should prove a minor, or not be deemed to be liable, he can be absolved. Gopal Doss can write, but very little, &c.

In the opinion of the moonsiff, plaintiff has satisfactorily proved the execution and validity of the bond, and Mohun Doss, one of the defendants, has acknowledged it, and although Gopal Doss can write his name and signature, as apparent in suit No. 375, still he can write but very little, and the evidence to which his signature is attached was taken after the bond was written; defendants have never produced any receipts in support of their alleged payments or other proof to substantiate them, nor are the payments certified as they ought to have been on the back of the bond. Under the foregoing circumstances, and not considering Tarachand as liable, the moonsiff decrees the case in full against all the defendants, excluding Tarachand whom he absolves.

Gopal Doss and Mohun Doss appeal, but advance nothing new or even state any plausible grounds for disturbing the decree of the lower court: their appeal is a repetition of their defence and nothing in refutation of the moonsiff's decision. I therefore uphold the decree, and reject the appeal.

THE 12TH JUNE 1850.

Appeal No. 46 of 1849.

*Appeal from the decision of Kaze Hamed Ally, Moonsiff of Sonamookhee,
dated 25th January 1849.*

Ramdhun Banerjea, son and heir to Koochulmohun Banerjea,
deceased, (Plaintiff,) Appellant,

versus

Mungla Bewah, widow, and Sabanee Bewah, mother of Muddoosoodun Dey, deceased, and Ramdhun Haldar, (Defendants,) Respondents.

SUIT to recover the amount balance due on a bond, principal 25, interest rupees 8-8, total rupees 33-8, less 2 rupees realized.

Plaintiff states that Muddoosoodun, deceased, and Ramdhun Haldar, defendants, jointly borrowed from his father rupees 25, by a bond, dated 15th Assin 1252 B. S.: they agreed to repay him in Maugh 1253 B. S., but having only paid rupees 2 on the 11th of Phalgun 1243 B. S., plaintiff brings this action for the residue *plus* interest, against Ramdhun and the heirs of Muddoosoodun, deceased.

A vakalutnamah was filed by defendant, Ramdhun Haldar, on the 26th August 1848, and on the 29th idem he was allowed five days to give in his "jowaub."

On the 18th of September, as the serving of the notices and ishtehars had been proved and no reply had been filed, a roobakaree

was issued and plaintiff was called upon for his proofs, witnesses, &c., the case being thus *ex parte*.

On the following day, or the 19th of September, plaintiff's witnesses were heard, and the bond was filed by him later in the same day; and after the case had in fact closed, Ram Halidar defendant appears, urging that sickness had previously prevented his defending the suit.

On the 13th of November 1848, defendant was required to prove this plea of sickness: he did so, and on the 23rd November it was admitted and his proofs and witnesses called for.

In his reply, Ram Halidar denies ever having borrowed the money or executed the bond: he affirms he is a rich, and plaintiff a poor man. Muddoosoodun, he alleges, was his debtor, and on his death he demanded his money from his mother, whereupon a dispute arose between plaintiff and Juggobundhoo: this suit is the result, and the case is altogether false.

Defendant having stated that he could write, the moonsiff summoned him on 19th January 1849; the evidence of his witnesses was taken on the 20th following, and eventually, for reasons assigned in his decree, he dismissed plaintiff's case, with costs.

Plaintiff appeals, but it is unnecessary to enter into the merits of the case, as the proceedings of the lower court are irregular and opposed to Section 24, Regulation XXIII. 1814; defendant should not have been allowed to appear *after* plaintiff's proofs and evidence had been received, and *after* defendant, notwithstanding he had filed vakalutnamahs previously, had not defended the case, though time was allowed him to do so by the court.

ORDERED,

Therefore, that the appeal be decreed, and the case remanded for trial *de novo*. Value of stamp paper to be refunded in the usual way.

THE 12TH JUNE 1850.

Suit No. 50 of 1849.

Appeal from the decision of Baboo Gopeekishen Banerjee, Moonsiff of Kotulpoor, dated 31st January 1849.

Kinnaram Roy, (Plaintiff,) Appellant,

versus

Gour Lohar, (Defendant,) Respondent.

SUIT to recover the amount balance due on a bond, dated the 19th Assar 1252 B. S., principal rupees 22, interest rupees 8-11, total rupees 30-11.

Plaintiff states defendant borrowed from him rupees 37, by a bond on the above date, promising to repay it in Phalgun 1252 B. S.:

duing that month he paid rupees 15, and plaintiff brings this action for the residue *plus* interest.

The usual notice and ishtehars having been issued and defendant not having appeared, the case was taken up *ex parte* on the 30th of October 1848, and plaintiff allowed five days to render his proofs and witnesses.

On the 10th November 1848, plaintiff's proofs and the evidence of his witnesses were received.

On the 16th November 1848, defendant files a vakalatnamah, urging that he had been sick for three months and unable to attend previously. The moonsiff therefore calls for proofs, and on the same day a roobakaree was written, admitting the plea of sickness, and requiring defendant to file his reply.

On the 17th November 1848, defendant replied, denying *in toto* the borrowing and execution of the bond, urging that plaintiff was gomashita of his (defendant's) village, and on the 17th of Bhadoon 1255 B. S. there had been a dispute and quarrel between them, in consequence of which plaintiff had trumped up this case against him. The evidence of plaintiff's witnesses could not be believed, as they were his dependants, and it had been taken *ex parte* whilst he (defendant) was sick and unable to appear, &c.

A jowaub-ool-jowaub was filed by plaintiff on the 29th of December 1848, to the effect that the defendant had been put up by parties named, and he (plaintiff) could prove that defendant in the month of Kartikh wished to compromise his debt in the presence of respectable people, and offered to liquidate it by instalments in three years, which plaintiff declined.

Eventually the moonsiff dismissed plaintiff's case, charging him with costs, and plaintiff appeals therefrom.

JUDGMENT.

It is unnecessary to enter into the merits of this case, as the proceedings of the lower court are irregular and opposed to Section 24, Regulation XXIII. 1814. The case was proceeding *ex parte*: the issue of the usual notice and ishtehar for defendant's appearance having been proved, and plaintiff's proofs and the evidence of his witnesses having been received by the court; defendant should not have been allowed to appear or defend the suit subsequently in the way he has done. I therefore decree the appeal, and remand the case for trial *de novo*. Value of stamp paper to be refunded in the usual way.

THE 12TH JUNE 1850.

Suit No. 67 of 1849.

Appeal from the decision of Baboo Gopeekishen Banerjea, Moonsiff of Kotulpoor, dated the 27th February 1849.

Ramnarain Manjee, (Plaintiff,) Appellant,

versus

Ramjeebun Sircar and Nufferchund Sircar, (Defendants,) Respondents. Musst. Hursoondree, Oozurdar.

SUIT for the recovery of the amount balance due on a bond, dated the 23rd Sawun 1252 B. S., for rupees 149, viz., principal rupees 111-8-5, interest rupees 37-14, total 149-6-5.

Plaintiff states defendants borrowed the above sum, and pledged various property as detailed in the bond. Defendants were to pay him rupees 50 in rice in Poos, and the remainder in Chyte 1252 B. S. Plaintiff was paid rupees 37-7-15 on several occasions as per receipts on the back of the bond, and he now brings this action for the balance.

Ramjeebun, defendant, replies, on the 26th June 1848, that he never jointly with his brother, Nufferchund Sircar, borrowed any money from plaintiff or executed any bond in his favour; the case is false; he (defendant) was gomashtha of mouzah Jote Dukkin, and plaintiff cultivated the jummye lands of Seetaram Ghose, and on his not paying up his revenue defendant attached his crops under Regulation V. 1812, and sold them through Seetanath and received his rent. Defendant repudiates the alleged payments on the back of the bond: urges that he can write and that his writing may be compared: states that some of the property said to have been pledged to plaintiff has been sold by kuballas to Musst. Hursoondree, objector, whose claims thereto in two cases were upheld on the 14th of May and 20th June 1847; that whatever else he possessed has been sold off, and had plaintiff any real lien on the property he would have laid claim to it before it was sold. The defendant was in another village during the day on which plaintiff's bond is alleged to have been executed, as he can prove, &c.

Plaintiff, in his rejoinder of the 1st July 1848, urges that defendants borrowed the money for their father's "shraud," as is well known; he can produce the different parties by whom he received, on defendant's account, cash, rice, &c., the two claim cases cannot affect him, as he was never aware of them, he denies ever having cultivated the lands of Seetaram Ghose, and can prove that defendants had money transactions with him antecedent to 1252 B. S.

In his reply to the rejoinder, on the 19th of August 1848, defendant, Ramjeebun, says his father died on the 10th of Sawun 1252 B. S., and after various ceremonies and proceedings consequent thereupon he left his home and wandered here and there begging,

&c., and only returned home on the 6th of Bhadoon at night, as he can prove, &c.

After this, petitions were given in by plaintiff and defendants on the 6th of September and 11th and 17th November 1848, in which they attacked each other's witnesses, and solicited further evidence might be taken, nuthees called for, &c. &c., and intermediately, on the 18th of September, the other defendant appears, and is permitted to file a reply, in which he supports his brother, Ramjeebun, &c.

An ameen was deputed to enquire into the matters set forth by both parties, and his papers were filed and objected to by plaintiff and defendants, roobakarees were sent to the moonsiff of Jehanabad, witnesses called through the joint magistrate of Bancoorah, and a mass of extraneous matter was introduced into the case and investigated, which was quite unnecessary.

On the 16th of January 1849, Musst. Hursoondree presented a petition, laying claim to the property specified in the bond, and urging that it had, on a former occasion, been released to her.

It is unnecessary to enter into the merits of the case, or to allude to the appeal, which has been preferred by plaintiff against the moonsiff's decision, dismissing his case, &c., as the proceedings of the lower court are illegal and irregular, illegal in having admitted Nufferchund Sircar defendant to appear and defend the suit after the pleadings had closed, and irregular in having received miscellaneous petitions and enquired into them, setting forth as they did matter not entered in the plaint or replies. Again, the decree is written carelessly and is full of errors in dates, &c., and the lower court has not paid due attention to Circular Orders of the 8th of January 1841, or to the provisions contained in Sections 25, 27, and 28, Regulation XXIII. 1814. I therefore decree the appeal, and remand the case for trial *de novo*. Value of stamp paper to be refunded in the usual way.

THE 13TH JUNE 1850.

Suit No. 11 of 1850.

Appeal from the decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated 23rd March 1850.

Messrs. John, James, and Henry Erskine, Plaintiffs,

versus

Gunganarain Roy, Rammohun Naik, and Mahanund Naik,
Defendants, Gunganerain Roy, Appellant.

SUIT to obtain the reversal of an order issued by the joint magistrate under Act IV. 1840, and the sessions judge's decision confirming it in appeal; for possession of their jumye rights in a tank called "Roy Pokur," including its embankment; for the destruction of certain vats, &c., which Gunganarain Roy defendant

has built with plaintiff's bricks, situated in mouzah Alumpoor, with value of bricks, &c. The value of the tank, &c. laid at rupees 425, and of the bricks rupees 349-10-18, altogether rupees 774-10-18.

Plaintiffs state that they and their ancestors have for years carried on trade in indigo, &c. in this district, that Gunganarain Roy, his brother, and ancestors, have been employed by them as servants for a long period, and they were always considered trustworthy and were treated accordingly. Relying on Gunganarain's and his family's good faith and honesty, plaintiffs have held talooks in their names "beenamee," but as they have of late played false and abused the trust plaintiffs reposed in them, members of the family have been from time to time discharged. Gunganarain Roy defendant fraudulently connived with Rammohun and Mohanund defendants; made arrangements with them to make bricks on the embankment of their (plaintiffs') tank called Roy Pokur, which belongs to their (plaintiffs') jumye land in mouzah Allumpore, chowkey Soonamkhee; contemplated removing their (plaintiffs') bricks, which were lying on the embankment and intended to mix them up with his own. On ascertaining all this, plaintiffs say they sent a poon by name Attur Khan, on the 8th of Aughun 1255 B. S. to Gunganarain to desist, whereupon Gunganarain threatend to beat him by his servants and dispossessed them (plaintiffs.) After this plaintiffs brought a suit No. 75, under Act IV. 1840, against Gunganarain Roy, before the deputy magistrate of Bood Bood, but it was dismissed (on 19th January 1849,) and in appeal the sessions judge confirmed the decision (on 6th March 1849,) and since this period Gunganarain Roy has commenced building vats, &c., and been making other arrangements for erecting a factory with the disputed bricks, &c. But as Gunganarain was their servant, and received a pottah from the naiks, maliks of the land, during the month of September 1843, for 37 beegahs of land, including the tank "Roy Pokur," at an annual jumma of rupees 10 on their behalf; and as his brother, Trilukanath Roy, gomashita of the Selumpoor factory, received rupees 220 for the purpose of making bricks, during the month of November and December 1843, and actually did make 1,98,200 bricks, as per his January account for 1844, and as the same gomashita charged rupees 129-10-18, for burning the bricks, &c. in his account for May 1844, whereby rupees 349-10-18 have been expended for bricks, Gunganarain can have no claim to them, and as the price of indigo fell and plaintiffs did not go on with their vats or factory, still the bricks, &c. were left under the charge of their (plaintiffs') servants, and rupees 7 have been entered in the account of November for September 1843 as salamy for the said pottah, which was given by the maliks to them for the land in dispute; further, in the month of July there is an item (charged in the account) of rupees 1-8 on account of expenses incurred in paying the rent, also in the month of August

rupees 40 were paid to the maliks as an advance on their pottah for the tank, &c. The aforementioned accounts and books in which they are entered in Bengalee, having been signed by Gunganarain Roy, plaintiffs maintain that the tank, bricks, and embankment are clearly their property, and though Gunganarain may have made away with their pottah still their rights cannot be lost under the facts represented. Plaintiffs therefore sue for the value of their jumye land, rupees 425, *plus* bricks, rupees 349-10-18, total rupees 774-10-18, with interest, wassilat, &c. Plaintiffs will sue separately for other sums; and the other parties named in the Act IV. case have not been made parties in this action, because it was not necessary to do so.

Gunganarain Roy, defendant, replies that plaintiffs have made out a long story and prepared papers, &c. to support it. Plaintiffs in the Act IV. case stated that he, defendant, held the pottah; and if so, why did they not then enter fully into the matter and give particulars of the pottah and kubooleut? The deputy magistrate enquired personally into the case, and plaintiffs had not time to prepare a pottah before it was dismissed; and on the strength of his (defendant's) possession and of his pottah being correct, the deputy magistrate's decision was upheld by the sessions judge. Plaintiffs have stated falsely regarding the accounts, signatures, &c. Defendant has expended a large sum of money and built a factory, and how can plaintiffs now oust him by their pottah? nor would he have built without a good title, and he can prove from chits, letters, &c. sent to him by plaintiffs, that the factory is his. Plaintiffs have done all this to make him (Gunganarain) stop his works; but they never held any pottah or possession. This defendant urges that he received a pottah, with a jumma of rupees 9, on the 9th of Kartikh 1255 B. S., from Rammohun Naik and others, maliks, and having erected a factory out of the old and new bricks he is in possession as the Act IV. suit proves. The case hinges on the pottah, and plaintiffs show that they have none, and the evidence of their witnesses cannot be trusted. The payment of rupees 40, in advance for rent, is false, and is not supported by dakhilas; and it is not usual to pay away money without taking a receipt. There is no truth in plaintiff's statement that they made the bricks; that coals for burning them, &c. came from their Mungulpoor concern, and that their accounts prove these facts. His (defendant's) brother, Triluknath Roy, never rendered any account as stated, and his enemies Seeboo Mundle and Bisshumbhur Singh have leagued with plaintiffs and instituted this action against him. Plaintiffs have no right to the bricks and tank. His (Gunganarain's) brother Coilashnauth Roy holds a share in the Mungulpoor concern, so that plaintiffs cannot call the coals theirs. Plaintiffs ought to have sued all the parties mentioned in the Act IV. case, and they have undervalued the tank, &c., and though any expressions may have been used conveying a "kyasee" opinion in the pro-

ceedings of the deputy magistrate or the sessions judge, still they cannot affect him (defendant.) In mouzah Allumpoor much of the land has become covered with sand, and in 1251 B. S. defendant prepared two brick kilns for a factory; but, on consulting with plaintiffs and at their instigation, they ceased building but took care of the bricks. He (Gunganarain Roy) is not plaintiffs' servant, but he and his brothers are shareholders in several factories and have accounts with plaintiffs, and defendant having been anxious to settle them; plaintiffs have been greatly annoyed, particularly as he (Gunganarain) has been building new factories, and they have been bringing cases against him every where. Plaintiffs hold no talook "beenamē" in his (defendant's) name, &c.

Mahanund Naik, defendant, replied by petition on the 1st of March 1850, denying that plaintiffs had received any pottah in September 1843, he was never paid rupees 40 as rent in advance, but was then a minor; he then supports Gunganarain defendant, and upholds the pottah said to have been granted to him on the 9th of Kartikh 1255 B. S.

Plaintiff's rejoinder was filed on the 28th August 1849, to the effect that there was no necessity to enter into particulars in the Act IV. case, as it was only simply regarding possession, still they stated therein that they had received a pottah through Gunganarain Roy, defendant, and as he (defendant) has made away with the said pottah, plaintiffs are unable to give the precise date. Plaintiffs are respectable gentlemen and are not in the habit of fabricating accounts and books: these are all kept up regularly, and their statements can be verified therefrom. Defendant says he burnt the bricks in 1251 B. S., so that their alleged pottah of the 9th of Kartikh 1255 must be a forgery: defendant has kept out of the way the 40 rupees dakhillas, in like manner as he has the pottah of September 1843. Defendant never commenced a factory and stopped the works at their instigation; they took the land and tank at Allumpoor to avoid the trouble and difficulty of carrying their indigo over the river Damoodur to their Selumpoor factory, and they had intended to build a factory thereupon.

Gunganarain Roy, defendant, in his reply to the rejoinder, states that he can prove by plaintiffs' chits, &c. in his possession, what he has advanced: he denies having made away with the dakhillas: this was never alluded to in the Act IV. case, &c.

Rammohun Roy, defendant, filed a vakalutnamah, but never replied.

On the 30th August 1849, a roobukaree was written, and an ishtehar issued under Section 12, Regulation XXVI. 1814.

On the 10th September 1849 the case was heard and defendant's vakeels were asked about the plea of under-valuation, and why they had not stated what the proper value was? they could give no reply. This plea was overruled. Various specified documents were

called for from both parties on a variety of subjects, and ten days in excess of the Dusserah vacation were allowed for their production, and eventually the case was decreed in plaintiffs' favor.

Gunganarain Roy, defendant, appeals, and respondents, appearing without summons, request that the case may be specially taken out of its turn as it is the indigo season, &c.

I proceeded so far with this case on the 11th instant, but I find it is unnecessary to go into its details, as the principal sudder ameen's decision, owing to the loose and irregular mode in which his proceedings have been prepared, must be reversed. His *first* proceeding is under Section 12, Regulation XXVI. 1814, and yet the issue between the parties were not drawn up previously under Section 10, Regulation XXVI. 1814, nor was there any proceeding held, as prescribed by law, recording the point or points to be established respectively by the plaintiffs and defendants: on the contrary specific documents were named and required to be produced in direct opposition to the Circular Orders, dated 13th September 1843, and 13th October 1848, No. 55. I consequently have no alternative but to decree the appeal, and to remand it for trial *de novo* and according to law. Ordered, therefore, that the appeal be decreed, and, as there is a sudder ameen recently appointed, that the case be remanded to him for trial *de novo*. Value of stamp paper to be refunded in the usual way.

THE 20TH JUNE 1850.

Suit No. 87 of 1850.

Appeal from the decision of Baboo Mohunloll Pandeh, Moonsiff of Burjorah, dated the 20th June 1848.

Ram Naik, Plaintiff,

versus

Manik Rukhit, Defendant.

SUIT to obtain a possession on 2 cottahs and 2 cowrees of land, value of earth removed, and probable expenses for filling up the hollow: altogether laid at rupees 21-8.

Plaintiff states that he held two parcels of land in mouzah Burjorah, he resides on one and the other was used for the Thakoor Kalee. The poojah was discontinued for some time and the parcel remained waste. Manik defendant's house adjoins this latter-parcel of land; he is the jujman, and when he (plaintiff) was at mouzah Beersingah, in chowkee Radhanagore, defendant, in the month of Assin 1251 B. S., destroyed the Kalee Mundul, made use of the earth, and built up two walls, one on the west and the other on the east side. Plaintiff having heard of this came home and remonstrated with defendant, whereupon the villagers collected and

defendant exchanged this parcel of $2\frac{1}{2}$ cottahs for 1 beegah of rice land called Oopurbund in mouzah Burjorah. Plaintiff cultivated by ryots during the years 1252 to 1255 B. S. inclusive, and received his share of the crops. Early in Bysakh 1256 B. S., Harradhun Roy and Bhoyrub Roy, plaintiff's ryots, went to cultivate and plough the land, but defendant prevented them, saying that he did not want the $2\frac{1}{2}$ cottahs of bastoo land, that plaintiff might have it back as he (defendant) had got the 1 beegah again. Defendant had pulled down his two sheds and dug a large hollow, and though he (plaintiff) wished to build up a couple of walls, defendant, on the 25th Aughun 1256 B. S., would not let him do so, but dispossessed him. Plaintiff says he has given up the 1 beegah, and now sues to get back his $2\frac{1}{2}$ cottahs of bastoo land, &c.

Defendant denies that any exchange as alleged was ever made, had such been the case plaintiff would have produced some written instrument in support of it. Defendant is and has been always in possession of the 1 beegah of rice land, and the so-called $2\frac{1}{2}$ cottahs of lakhiraj land is in reality 3 cottahs, yielding a jumma per annum of 4 annas, agreeably to a pottah, dated the 9th Phalagoon 1242 B. S. which he (defendant) holds from plaintiff. He has built two cow sheds thereupon, has paid his rent to plaintiff, and been in possession for fourteen years, &c.

Plaintiff, in his jowaub-ool-jowaub, denies ever having granted a pottah to defendant.

The moonsiff considers that the following points require to be settled: first, whether defendant did or did not give to plaintiff 1 beegah of land in lieu of that which is at issue? Secondly, whether plaintiff can be put in possession of the contested land, defendant not having made over to him the 1 beegah which was exchanged? Thirdly, whether defendant's plea that he holds the bastoo land by a pottah obtained from plaintiff is true?

The plaintiff produced seven witnesses in support of his claim, and they prove that defendant gave up to plaintiff, in exchange of his $2\frac{1}{2}$ cottahs of bastoo land, 1 beegah appertaining to Oopurbund. In the early part of 1256 B. S., defendant prevented plaintiff's ryots from cultivating it, and defendant still retained possession. He told plaintiff to take back his $2\frac{1}{2}$ cottahs of bastoo land, whereupon plaintiff was about building a wall, and defendant resisted and taking advantage of plaintiff's absence he encroached upon the said land and built a wall thereon. Plaintiff, on his return, effected an exchange, as set forth, in the presence of respectable people.

Defendant filed a pottah on plain paper, dated 9th Phalagoon 1242, B. S., several dakhillas, and a list of seventeen witnesses, four of whom appeared and were examined, but in the opinion of the moonsiff, for reasons assigned, their evidence does not support defendant's plea: the moonsiff also proceeded to the spot and after instituting some enquiries he thinks that the pottah filed by defendant is in

appearance very suspicious, and he cannot believe it was written fourteen years ago: he is of opinion that defendant in collusion with Nudiarchand prepared the document for the occasion, and that defendant's witnesses gave false depositions at defendant's instigation.

The moonsiff, having condemned the pottah, says it is unnecessary to say any thing regarding the dakhillas, which are forgeries, there being a discrepancy apparent in plaintiff's signature; and deeming defendant's pleas to be entirely false, he decrees the case in plaintiff's favor, with costs, &c., and commits defendant and his witnesses (excepting Buddun Dey) to the joint magistrate of Bancoorah, the former to take his trial for forgery and the latter for perjury.

Defendant appeals, urging that the plaintiff affirms that the exchange of $2\frac{1}{2}$ cottahs for 1 beegah was only under a verbal agreement: and that he cultivated it for four years, after which he was ousted by defendant, whereas it has been clearly proved by his own as well as by plaintiff's witnesses that he (defendant) appellant, has been in possession for 7 or 8 years, and not only from 1251 B. S., as stated by plaintiff. It is true that five of plaintiff's witnesses support him, but they are plaintiff's dependants, and their evidence is only hearsay, unsupported by any documentary proofs. He objects to the testimony of Kartick Mookerjia having been accepted by the moonsiff, and defendant only named him as a witness, as he was present when the pottah was drawn up, and he (defendant) had pointed out that this case had been got up by the said Kartick. The contradictions in the deposition of his (defendant's) witnesses have not been specifically pointed out by the moonsiff; and though he may have gone to the spot, examined witnesses, and instituted enquiries, they are nevertheless void and non-judicial as oaths were not administered to any one. To convict parties, and to condemn documents on such evidence is quite unaccountable. Plaintiff's case was barred by the statute of limitations, as his (defendant's) possession dates from 1242 B. S., and upwards of 12 years have elapsed, &c.

The appeal was taken out of its turn owing to the forgery and perjury cases connected with it being under enquiry, and it was admitted on the 15th of May 1850.

Respondent has not replied, though he has been served with the usual notice.

JUDGMENT.

This is, in my opinion, a fraudulent proceeding on the part of plaintiff, and his suit cannot be sustained: it entirely rests on hearsay evidence, and on two alleged verbal agreements, one whereby plaintiff and defendant exchanged some land in 1251 B. S., and the other by which the said exchange was cancelled in 1256 B. S., both of these alleged agreements having been repudiated by defendant. I see no reason to doubt the genuineness of the pottah and

dakhillas filed by defendant, the former dated so far back as the 9th of Phalgun 1242 B. S., and the latter of various dates. Defendant's possession is clearly established antecedent to 1251 B. S., during which year plaintiff states defendant exchanged with him the $2\frac{1}{2}$ cottahs for 1 beegah in another locality. No instrument was ever executed in proof of this exchange, though plaintiff states he cultivated the 1 beegah and received his rents therefrom from the ryots named for four years, after which defendant ousted him in 1256 B. S., telling him (plaintiff) to take back the old parcel of $2\frac{1}{2}$ cottahs; and resting his case on these verbal agreements, and because he was dispossessed from this 1 beegah, plaintiff sues for possession of the $2\frac{1}{2}$ cottahs, which cannot be. I do not believe one word of plaintiff's statement or his witnesses: and as the evidence of Kartick Chunder Mookerjee and other witnesses was not taken on oath under Act No. V. 1840, the moonsiff's enquiries are invalid, and the opinion founded thereupon good for nothing; further, the contradictions pointed out by the moonsiff in the evidence of some of the witnesses are not fatal to defendant, or at all corroborative of plaintiff's case; and as plaintiff has in no way proved his case by either documents or trustworthy evidence, I cannot uphold the decree of the lower court, and I hereby reverse it, dismissing plaintiff's case. Costs to fall upon plaintiff (respondent,) and as the original decree has been now reversed, the moonsiff's proceedings in regard to the forgery and perjury must as a consequence be equally reversed.

THE 27TH JUNE 1850.

Suit No. 286 of 1848.

Appeal from the decision of Baboo Mohuntoll Panday, Moonsiff of Burjorah, dated 8th July 1848.

Saduck Mundul, Plaintiff,

versus

Kishen Doss and others, Defendants.

Gunganarain and others, Objectors.

SUIT to obtain possession of beegahs 2-8 of jumyc land, laid at rupees 15.

Plaintiff states that there is a parcel of land in mouzah Bhyrub-poor, pergunnah Shahurjoorah, called "Janeerbund," it comprised $2\frac{1}{2}$ beegahs, and was partly cultivated with rice and partly fallow: in the same village there was another parcel of beegahs 1-5, belonging to an absconded ryot by name Kooraram Bowree, altogether beegahs 3-15, bearing a mocurruree jumma of 1 rupee, and for this land plaintiff states he obtained a pottah on the 12th Jyete 1253 B. S. In the smaller parcel plaintiff planted sugarcane and was in possession, and at some expense he brought the $2\frac{1}{2}$ beegahs into cultivation, growing rice and making a thoroughfare on

the west side, but defendants other than the Rajah Shunkernerain, dispossessed him. He consequently sues for possession with *tusurruffaut*.

Kishendoss and three other defendants deny that the "Janeerbund" belongs to the rajah's zemindaree, and urge that it pertains to lot Bukshee, mehal Dehypara, hooda Bamundee, and that the lands of mouzah Goolturra are irrigated from its water; Gunganarain is the talookdar; all the land situated to the east side of the bund belongs to Goolturra; on the west side there is a thoroughfare for bullocks, &c., and beyond it lies the zemindaree of the rajah; rice was never cultivated there.

In his *jowaub-ool-jowaub*, plaintiff states that the talookdar of the Bukshee mehal would have laid claim to the "Janeerbund" if it had been his: he asserts that the "bund" has partially filled up and has been brought into cultivation.

Rajah Shunkernerain supports plaintiff.

Gunganarain Roy, objector, claims the lands as belonging to his lot, but urges that it does not belong either to plaintiff or the defendants.

The moonsiff appears to have gone to the spot, to have prepared a map of the disputed land, and to have held local enquiries there: he considers that there was a pool of water about 5 or 6 cottahs in extent in the centre of the "bund," and that defendants had established the fact of their having always used the water for the purpose of irrigating their Goolturra lands, and that the other portion of the land was "oftadeh," still plaintiff had proved by witnesses that defendants had destroyed his rice and had ousted him, and he does not think that the disputed land can be called a "bund:" he therefore decreed possession of the land to plaintiff, and retained defendants in the right to the water, disallowing "*tusurruffaut*."

Plaintiff appeals, objecting to the right to the water having been given to defendants, and to his demand for *wassilat* having been rejected: defendants have failed to prove that the disputed land is a "bund," and as it is not so, how can they have the water, &c.

Gunganarain files a petition, and this appeal was admitted on the 20th of May 1850, and though respondents have received notice thereof, none have appeared.

JUDGMENT.

I consider this is a trick got up by the rajah zemindar of pergunnah Shahurjoorah to get possession of a bund or reservoir called "Janeerbund," which from one cause or another has gradually filled up, thereby leaving a portion of the land on its sides fit for cultivation. Plaintiff calls the disputed land *Janeerbund*, which clearly shows that it is a *bund*, and this is proved by the moonsiff's enquiries, which go to establish the right of defendants to the water which collects in the bund, and which they use and have used for times past, for irri-

gating their fields. I do not consider plaintiff has proved his pottah, or his occupancy of the land from which he claims compensation; his pottah is dated the 12th Jyte 1253 B. S., and on the 17th of Sawun following, or in less than two months, he was dispossessed; but no proof has been tendered by any party showing that the bund previously, or in 1253 B. S., belonged to the rajah, or that he had any right to it, or power to grant the nominal pottah to plaintiff, which has given rise to this action. This appeal and the other, No. 315, connected with this case, have been heard together; and as plaintiff's case has been dismissed, and the decision of the lower court reversed by suit No. 315, this appeal is, as a matter of course, dismissed. Costs to fall upon appellants.

THE 27TH JUNE 1850.

Appeal No. 315 of 1848.

Appeal from the decision of Baboo Mohunloll Pandeh, Moonsiff of Burjorah, dated 8th July 1848.

Saduck Mundle, Plaintiff,

versus

Kishen Doss and others, Defendants.

Gunganarain Roy, Objector.

THIS and the preceding suit are the same, the appellants in this instance being the defendants in suit No. 286: they allude to having had the use of the water in the Janeerbund, that plaintiff admits it to be a bund, calling it by that name, &c. &c.

My judgment in appeal No. 286, just now decided, is sufficient for this case. Ordered, therefore, that plaintiff's case be dismissed, and the decision of the lower court reversed. Costs of suit throughout to fall on plaintiff (respondent.)

ZILLAH CHITTAGONG.

PRESENT: A. SCONCE, ESQ., OFFICIATING JUDGE.

THE 4TH JUNE 1850.

No. 65 of 1850.

Appeal from the decree of Mr. Finney, Sudder Moonsiff, dated 2nd January 1859.

Punchanund Dutt, (Defendant,) Appellant,

versus

Janoo Beoparee, (Plaintiff,) Respondent.

THE plaintiff sued to recover a small portion of land (g. 1-0-1-4,) which, as he alleged, the defendant, Punchanund Dutt, had forcibly taken from his premises within the town of Chittagong and added to his own.

The moonsiff found that, both by witnesses and by the investigation of an ameen, not only the defendant had dispossessed plaintiff of 1 krant, 2 dunts, and 12 renoos, which he had long held (the witnesses say at least 16 or 18 years,) but that the same land had already, by a decision under Act IV. 1840, been declared to be in the possession of the plaintiff, and that subsequent to this order, that is, five years afterwards, defendant had ousted him. In support of his own right to hold the land, defendant (appellant) offered no evidence, and I find no reason to interfere with the facts determined by the lower court: even the justification that the appellant offers for his failure to adduce any proof of his counter claim, namely, that the moonsiff passed no order to that effect, is against the record.

The decree of the lower court is therefore affirmed.

THE 6TH JUNE 1850.

No. 163 of 1849.

Appeal from the decree of Moulvee Feratoollah, Moonsiff of Bhojpore, dated 16th February 1849.

Akbur Allee and Asgur Allee, (Defendants,) Appellants,

versus

Mohsun Allee and others, (Plaintiffs,) Respondents.

I POSTPONED this case that the respondents' vakeel might give more explanation of the circumstances and object of the plaintiffs' insti-

tuting the suit; but he is still unable to assign any intelligible causes for the step taken by the plaintiffs. They sued to quash a roobukaree recorded in a summary suit by a deputy collector and nothing more. They claim nothing. In that summary suit two of the plaintiffs sought to recover the value of 21 head of cattle, which, they alleged, had been irregularly distrained: their claim was dismissed: they seek now to quash that verbal order of dismissal. But it happens that the plaintiffs instituted several regular suits to recover the value of the cattle in question; these suits, moreover, have been decreed in their favor; but not content with these steps, they superfluously instituted a separate action to reverse the verbal order of the revenue court. I need hardly say that in the regular suits for the recovery of the value of the distrained cattle, the matter really at issue in the summary suit was, in fact, disposed of. The moonsiff, in decreeing this action, threw the plaintiffs' costs upon the defendants: but as the suit was obviously unjustifiable, the (plaintiffs) respondents must bear their own and the appellants' costs in both courts. I so decree, dismissing the original suit.

THE 6TH JUNE 1850.

No. 249 of 1849.

Appeal from the decision of the Moonsiff of Bhojpore, Moulvee Ferat-oollah, dated 6th April 1849.

Akbur Allee, (Defendant,) Appellant,

versus

Hyder Allee and others, (Plaintiffs,) Respondents.

I HAVE to consider in this appeal whether or no the plaintiffs (respondents) made good their claim to recover possession of a noabad talook, which, to the extent of d. 1-7, had been sold, in execution of a decree, to the appellant, Akbur Allee, as the rights and interests of one Gour Mohun.

The moonsiff found the talook to be proved to have belonged to the plaintiffs, and I uphold his order. Neither the decree-holder's representation nor the purchaser of the talook, this appellant, have proved the land to be the property of Gour Mohun. Not the shadow of evidence to that effect is offered. On the other hand, the respondents, by witnesses and by the production of the revenue settlement made by them, on the 25th July 1839, with Government, have fully substantiated their allegation that land possessed by themselves was sold as the property of Gour Mohun. This settlement itself must be taken to show that at its date the respondents were the noabad talookdars in possession of the land: and I have nothing but the mere execution sale, which occurred in September 1844, to show that any pretension of possession either before or after the settlement was set up on the part of Gour Mohun. In the

proceedings connected with the execution of the decree, we have nothing to show upon what grounds the presumed property of Gour Mohun was leased.

The appellants would have it inferred that a plaint instituted by the respondents in October 1840, wherein they sought to compel Gour Mohun to reduce the jumma of a talook held by them under his lakhiraj land, shows that they had admitted Gour Mohun to be the superior proprietor of the land in their occupancy. The land so sued for, amounted to d. 1-6-14, and though it was obvious from the proceedings taken in execution that d. 1-6 lakhiraj land had been attached independent of this disputed land, I called upon the appellant as well as the respondents if they thought fit to show that the lakhiraj land of the suit of 1840 was identical with the noabad land of the present action. To justify his assertion in this matter appellant has brought forward no evidence: and besides, it is clear that it is against all probability that the respondents should sue the zemindar in 1840, for a reduction of the rent of land which the year preceding they had themselves engaged separately for with Government as noabad talookdars.

The moonsiff's decree is therefore affirmed: the costs of appeal must be paid by appellant.

THE 8TH JUNE 1850.

No. 67 of 1850.

*Appeal from the decision of Mr. Finney, Sudder Moonsiff, dated 14th
January 1850.*

Sanchee Soudagur and Meyan Jan, (Defendants,) Appellants,

versus

Bhola Ghazee and others, (Plaintiffs,) Respondents.

BIHOLA GHAZEE, the plaintiff in this action, sued to recover 1 gundah 2 cowries of land, which he averred Sanchee and others had dispossessed him of, and it was the answer of Sanchee and Meyan Jan that plaintiff allowed them so much land to make a road, by which both their dwellings might be approached; one party giving the land, the other being at the expense of raising the road.

The moonsiff decided fairly enough that the appellants had failed wholly to prove the defence set up by them. It may or may not be a convenience to them and even to the plaintiff to have the land appropriated to a pathway; but as the proceedings stand I must conclude that they have forcibly assumed the disposal of land, which they admitted was in the possession of Bhola Ghazee. In appeal, indeed, they insist that they now hold a superior interest in the land settled with Bhola Ghazee, having become noabad talookdars of that portion which is noabad, and having got a talook pottah for that portion which is turuf; but this higher tenure gives them no title

to dispossess the plaintiff as itmamdar. Finding then, in agreement with the moonsiff, that the appellants failed to prove the plea set forth in their answer, I must uphold the order of the lower court.

THE 12TH JUNE 1850.

No. 4 of 1850.

Appeal from the decree of Pundit Sreenath, Principal Sudder Ameen, dated 14th January 1850.

Ahsunoollah Chowdree, (Plaintiff,) Appellant,

versus

Shuroofoonissa, (Defendant,) Respondent.

THIS suit was instituted to recover 1200 arees of mustard seed, which the plaintiff averred that the defendant (respondent) Shuroofoonissa, by a bond, dated 10th Phalgun 1208, in consideration of an advance of rupees 400 in cash, had agreed to deliver to him in the month of Sawun following.

Defendant (respondent) denied that the advance was ever made to her, and she denied the bond itself: adding that the plaintiff's daughter had married her son, Asgur Alee, and that, on the death of the latter, plaintiff quarrelled with her on the subject of his daughter's dower; but that his claim on that head had been adjusted, and the deed of dower released.

I have had little difficulty in agreeing with the principal sudder ameen that the primary cause of the plaintiff's action, namely, the payment by him of rupees 400 cash to the defendant, was not proved. On the contrary, it is proved to my entire satisfaction that this sum in cash was not paid by the plaintiff, now appellant. But the difficulty which presented itself to my mind, and which I have taken time to consider, was this, whether on a review of the transaction that did occur between the parties, the defendant (respondent) Shuroofoonissa, having voluntarily entered into the obligation preferred, should be legally bound to fulfil the terms of the bond; and more especially whether she should not be bound by the bond, if it were proved that she had executed it in return for some valuable consideration.

All the witnesses examined, for the plaintiff or for the defendant, or for both jointly, show that, at the time the bond now sued upon was executed, the dower of the plaintiff's daughter, gool mehr, was adjusted. Rupees 1200 was the sum admitted to be due by the respondent Shuroofoonissa, on account of her deceased son, Asgur Alee: and it is proved that, in discharging this debt, the deed of dower was restored to her and a receipt in full granted.

As regards the facts at issue, the only doubt that is raised from the evidence of the witnesses is, whether, to make up the dower to the sum of rupees 1200, Shuroofoonissa received from the appellant

the amount entered in the litigated bond, or having touched some money handed to her by the appellant as a symbol of receipt, she by the bond virtually became Ahsunoollah's debtor for that amount. Two of plaintiff's witnesses, Ramdoss and Kumer Alee, and perhaps a third, Seyed Hossen, speak to a cash payment of rupees 400, by Ahsunoollah: but Asgur Alee, a fourth witness, as well as Abdool Alee, Kalachand, and Amjud Alee, who were examined for both plaintiff and defendant, unequivocally show that Shurufoonissa accepted the nominal tender of some silver as the equivalent of a cash payment, and that the lady put her name to the bond voluntarily making herself a debtor on the terms specified. To the same effect speak the defendant's witnesses, Ramdoss and Afazutoollah: the last indeed is the defendant, respondent's brother; and though he might be supposed to have an interest in not giving impartial evidence, which should bear against his sister, he no less than the others admits that the transaction occurred in the manner now stated.

Let it be observed that the defendant has not pleaded that the bond was got from her through fraud or undue influence; her answer to the claim is that the bond was not granted by her. Now it is abundantly evident from the statement of the defendant's own witnesses that the bond is genuine, and that it was deliberately signed and issued by her.

There appears to be a leaning in our courts, in trying the validity of instruments of this nature, to require proof not only of the execution of the bond, but of the consideration for which it was granted. This is more than the law dictates. Section 15, Regulation III. 1793, directs simply that a bond must be proved to have been executed in the presence of two credible witnesses; or if that execution be not proved, that proof should be given of the receipt by the grantor of some valuable consideration. By the law then proof of the delivery, or the appropriation, of a valuable consideration is required as a *substitute* for proof of the execution of the instrument by which the other party is bound. And perhaps it merits critical discussion whether in a case in which there has been no underhand dealing, in which there is no allegation of fraud, surprise, or undue influence, the transfer of a valuable consideration is not to be *presumed* from the deliberate execution of the bond itself.

As regards the suit before me, however, I cannot doubt that the defendant (respondent) had received what she conceived to be full consideration for the bond executed by her. The deed of dower granted by her deceased son was returned to her, and at the same time a discharge in full of all claims under that marriage settlement. So far it might become a question in what manner a bond to Ahsunoollah Chowdhree, the appellant, perfected, or was the means of perfecting, the payment of the dower due to his daughter. This point, though not unconnected with, is extraneous to the obligation

incurred by Shurufoonissa in executing the bond; and it appears to me that a decree, which should declare that the validity of the bond is not binding upon Shurufoonissa, would seem to justify her in the fraud which she seeks to perpetrate, by withholding her liability in a *quasi* contract, from the performance of which she would thus gain every thing and give nothing.

My conclusion is then that the suit must be decreed in favor of the plaintiff (appellant,) only he has given no evidence by which I can estimate the value of the 1200 arees spoken of in the bond: in this deed the value was assumed to be at 3 arees per rupee; in the plaint he assumes the price to be $1\frac{1}{2}$ aree. Upon the whole I think the justice of the claim will be met by decreeing the principal sum, rupees 400, with interest from the date of suit. Costs in both courts in proportion to the principal now decreed will be charged against the respondent.

THE 13TH JUNE 1850.

No. 198 of 1850.

*Appeal from the decision of Moulvee Anwar Alee, Moonsiff of Sundeep,
dated 26th March 1850.*

Lushker Alee and Ahmudoollah Chowdree, (Defendants,)
Appellants,

versus

Mahomed Bukhtawur, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff, as howladar of the defendants, who are talookdars of chur Siddhee, to recover from them excess rent levied from him for 1254, in execution of a summary decree: and the claim was based on the decree passed by principal sudder ameen, Pundit Sreenath, who held the plaintiff, Mahomed Bukhtawur, to be entitled to have his rent reduced to the amount of rupees 228-12-9-2 per annum.

The moonsiff, Moulvee Anwar Alee, following the principal sudder ameen's decree, ordered the refund claimed. It happens, however, that on the 30th ultimo I reversed the principal sudder ameen's decree, and have held that Mahomed Bukhtawur's claim to a reduction of rent was not tenable. Under these circumstances this claim falls to the ground: the moonsiff's order is accordingly reversed, and all costs will be charged to the respondent.

THE 20TH JUNE 1850.

No. 19 of 1849.

*Appeal from the decision of Pundit Sreenath Bidyabagish, Principal Sud-
der Ameen, dated 6th November 1849.*

Ram Mohun Byd, (Plaintiff,) Appellant,

versus

Terahee Ram and others, (Defendants,) Respondents.

FOLLOWING the precedent of the Sudder Court, as conveyed in their decree of the 5th March last, upon the appeal of Kooer Rood-ranund Singh, I must remand this case for a more complete investigation. The provision of Section 10, Regulation XXVI. 1814 has been ostensibly complied with by Pundit Opinder Chunder Nyarutun, (at that time principal sudder ameen of this district,) in a proceeding, dated 14th July 1848; but this proceeding makes no attempt whatever to set forth the pleas at issue between the parties, and on the face of it shows that Pundit Opinder Chunder had not himself considered the issues he had to try. The costs of this appeal must follow the eventual judgment.

THE 21ST JUNE 1850.

No. 3 of 1850.

*Appeal from the decree of Pundit Sreenath Bidyabagish, Principal Sud-
der Ameen, dated 13th December 1849.*

Ramguttee Sen, (Plaintiff,) Appellant,

versus

Debeedass Sen and Bessumber Sen, (Defendants,) Respondents.

THIS is a claim founded on a khata, or book debt, which, it is alleged, the defendant, Debeedass Sen, acknowledged the correctness of on the 15th Maugh 1248, and which he desired his son, Bessumber Sen, to put his name to. The sum so alleged to have been accepted was rupees 755-3-3, and to that is added subsequent interest.

I entirely agree with the principal sudder ameen that the plaintiff's claim is falsely got up. The acknowledgment of Debeedass Sen and the signature of his son are proved by three witnesses; but the evidence of these men is upon the face of it incredible. One man, Ramchurn, says he was formerly in the plaintiff's service; that he went to demand some arrears of wages due to him, and then plaintiff took him to Debeedass' house. A second, Taranee Churn, who lived one puhur, say twelve miles off, said he came into town to buy tobacco and goor; that the modee would not give him these

articles without money; that he went to the plaintiff to borrow rupees 2, and then hearing he had gone to Debeedass' house, he followed him there. And such is the statement of the third witness; one Mohes Chunder Dutt, he says, sent him to call plaintiff, and hearing he had gone to the defendant's house, he went to him there.

Further, it is to be observed that, on the very date on which the alleged balance was struck, there is entered a disbursement made by the plaintiff to the amount of rupees 600, but of this payment we have no proof, nor, in fact, any explanation of the payment. And further it tells against the claim that Debeedass did not sign the khata himself. The witnesses say that, after testing the account, he went to prayers and told his son to sign for him.

The defendant (respondent) Debeedass does not deny that he has had dealings with the plaintiff (appellant.) He also admits that, on two occasions subsequent to the 15th Maugh 1248, he remitted rupees 275 to the appellant, on account of some transaction of theirs in gold and silver ornament; this sum the appellant places to the payment of interest due on his alleged debt; but there is no reason to believe that Debeedass Sen has bound himself to the appropriation of the money in that form. The principal party through whom the remittance was made, Ramsuntosh cannot specify the particular of the accounts in connection with which the money was paid by him: and after him it seems the money passed through the hands of one Grees Chunder; and he again professes to have paid the money to the defendant's mookhtar, Ramsoonder. So that altogether the manner in which this money reached the plaintiff is very inexplicitly stated.

But be that as it may, I consider that the genuineness of the original debt is unproved, and I must uphold the principal sudder ameen's decree. All costs will be charged to appellant.

THE 28TH JUNE 1850.

No. 141 of 1849.

Appeal from the decree of Mr. Finney, Moonsiff of the Town of Chittagong, dated 8th February 1849.

Mahomed Kamil, (Defendant,) Appellant,

versus

Ram Ruttun and others, (Plaintiffs,) Respondent.

I HAVE to consider here whether, with this defendant (appellant,) or with the plaintiffs (respondents) rests the superior right of occupancy of a small patch of about 6 gundahs of land, which is represented in the measurement papers of the district by dagh 8263. The plaintiffs call it noabad land, and as such they say it belongs to talook Bindabun Bholanath, while Mahomed Kamil states it belongs

to an under talook of the khass turruff Ferhad Hyder. Now the point, which the moonsiff has held to be proved, appears to me not proved. It is true in the measurement chittahs the occupancy of the plaintiff is recorded, but that does not of itself prove possession; and that the disputed land was settled with the plaintiff by Government, is not proved,—it is not even asserted. Moreover, as to the mere fact of possession, the evidence of witnesses tells more in favor of the respondent. It was because he held possession of the land, as the plaintiffs say, for 1207, and built a vessel on it, that rent is claimed: but we have no evidence that plaintiffs ever received rent on account of the land, or that at any time it was even formally recognized as their property. Two witnesses say that for the years 1204 and 1205 certain parties gave the plaintiffs koboolents for the land; but neither are the koboolents filed, nor is the amount of rent stated, nor, in fact, are any particulars given from which alone credibility can spring. The moonsiff took trouble with the case; he deputed anameen to hold a local enquiry, in addition to the evidence received in his own court: but it would seem as if he was guided by the ameen's report and not by the evidence of the witnesses submitted by him. The witnesses examined for the plaintiff say nothing of what they themselves knew, but of what the plaintiffs told them of their alleged claim. I must therefore reverse the moonsiff's decree, and dismiss the suit.

THE 29TH JUNE 1850.

No. 76 of 1450.

Appeal from the decree of Cazeer Guda Hossein, dated 14th January 1850.

Dewan Beebee, (Plaintiff,) Appellant,

versus

Prankishen Chuckerbuttee and others, (Defendants,) Respondents.

I HAVE endeavoured as much as possible to avoid remanding this case, but the moonsiff has transmitted the proceedings in so incomplete a form, and he has taken so little trouble to enter into the merits of the points at issue between the parties, that no choice is left to me. The moonsiff dismissed the claim, thereby deciding in favor of the defendants; but, in his decree, he has stated no more than the defendants stated in their answer; he simply says the land is theirs: and what casts a still greater defect upon his judgment is that he virtually devolved the decision of the suit upon two ameens, adopting the conclusions to which they came without giving his reasons for doing so.

Further, I have to observe that the plaintiff's suit related to two distinct patches of land represented by daghs 174 and 3805; and that imperfect as the moonsiff's judgment is, it related to only the dagh 174.

And further, the moonsiff has not permitted the plaintiff the opportunity sought by her to summon two witnesses, one a moonsiff of this district, and the other a prisoner in jail: and besides, it is by no means apparent from the decree why plaintiff did not take the opportunity of procuring the attendance of other witnesses, on which point she specially petitioned the moonsiff.

I must therefore return the case for further investigation. Bulky as the bundle of papers is, there is absolutely nothing to deter the moonsiff from going through it: and above all it is necessary that the moonsiff should, with reference to the facts pleaded by the parties, give his reasons for adopting the pleas of the one party, and rejecting those of the other.

The value of the stamp of the appeal will be refunded.

THE 29TH JUNE 1850.

No. 77 of 1850.

*Appeal from the decree of Cazee Guda Hossein, Town Moonsiff, dated
14th January 1850.*

Adur Beebee, (Plaintiff,) Appellant,

versus

Dewan Beebee and others, (Defendants,) Respondents.

THIS case is intimately connected with the appeal No. 76, which I have this day remanded; the plaintiff, Adur Beebee, having complained of being dispossessed of 1 gundah, 3 cowries, 2 krants of land, which formed part of the 5 gundahs 1 cowrie, suet for in the separate suit of Dewan Beebee: in fact Adur Beebee professes to be Dewan Beebee's tenant: and the moonsiff has decided that the land does not belong to the turruff Assud Allee of which Dewan Beebee is the proprietor. As the fact of Dewan Beebee's right of property and possession is at issue in the suit now remanded, I must return this case also.

The value of the appeal stamp will be refunded.

PRESENT: S. BOWRING, Esq., OFFICIATING JUDGE.

THE 3RD JUNE 1850.

No. 21 of 1849.

Regular Appeal from the decision of Mr. J. Reily, Officiating Additional Principal Sudder Ameen, dated 22nd November 1849.

Sadeg Ali, Mahommud Shuffee, Shahamut Ali, and Jaffer Ali,
(Defendants,) Appellants,

versus

Rammohun Sirdar, (Plaintiff,) Respondent.

SUIT instituted on the 27th January 1849, for the delivery by defendants of 1126 arees of mustard seed, value Company's rupees 750-10-8.

The plaint set, forth that the defendants, Sadeg Ali, Mahomed Shuffee, and Jebun Ali, (deceased,) and Mahomed Ami, (deceased,) contracted on the 15th Maugh 1198 M. to deliver to plaintiff the above mustard seed, for which they at the time received an advance of Sicca rupees 250; that at two payments they had repaid to plaintiff rupees 62 in cash, but had not fulfilled the contract.

The defendants admitted the contract and the repayment of 62 rupees, but stated the balance had also been paid, and produced a receipt for the same stating that the original tumusook had been burnt when plaintiff's house had been destroyed by fire.

The plaintiff rejoined that when his house was burnt, his papers were saved.

The officiating additional principal sudder ameen observed that the only point for decision was, whether the receipt produced by defendants was genuine; he considered it was not, for the following reasons:

First.—That the bond is in existenco, and it is improbable that defendants would have paid without seeing it destroyed or cancelled.

Second.—Plaintiff's house was burnt in 1209 M., and the receipt is dated a year earlier.

Third.—There are five witnesses to the receipt, three of these were charged by plaintiff as incendiaries, and a fourth is a relative of defendants, the evidence of four therefore open to suspicion.

Fourth.—The writing of the receipt is stiff, unusually so, for so simple a document.

Fifth.—Plaintiff is asserted to have written the receipt himself; his handwriting in presence of the court is very different.

Sixth.—On the receipt are the words bekulm khood, an unusual expression.

Seventh.—The witnesses say the plaintiff took the stamp on which the receipt is written out of his box. The plaintiff is a

Hindoo, and the stamp was purchased thirty-four days previously by Jan Mahomed, a *Musselman*.

Eighth.—Mahomed Ali, a witness, who professes to have commercial transactions and to keep accounts, says he lent the defendants money to discharge their debt to plaintiff, but has destroyed the tumusook they then gave him, and has no record in his books of the transaction with defendant. Mahomed Ali is connected by marriage with defendants.

The officiating additional principal sudder decreed therefore for the plaintiff, but as this last person had already accepted money compensation in part payment, he considered the transaction as a debt, and awarded Sicca rupees 250, less the sum repaid by defendant, with interest.

The defendants appealed, asserted their case proved, and explained the objections raised by Mr. Reily to the receipt, as follows:

First.—The tumusook had been destroyed by fire previous to the date of the receipt and could not be cancelled:

Second.—Plaintiff's house had been burnt several times, and as much is admitted by plaintiff himself.

Third.—The witnesses to the receipt are very respectable, and the release fully proved.

Fourth.—The release is properly written, no remarks are necessary.

Fifth.—The plaintiff is known as a litigious man, he must have written before the court in a feigned hand.

Sixth.—The words bekulm khood are not unusual.

Seventh.—Hindoos buy stamps for Musselmans, and Musselmans for Hindoos. The fact noted by the principal sudder ameen is not extraordinary.

Eighth.—Mahomed Ali lent defendants the money to discharge the debt. He deposed distinctly to the fact.

The plaintiff also petitioned that the mustard seed might be awarded to him.

JUDGMENT.

The defendants have not, in my opinion, satisfactorily replied to the doubts expressed by the principal sudder ameen. The plaintiff merely states that when his house was burnt, the bonds were saved, but this is not legal proof of the house having been destroyed by fire more than once, though such may have been the case. The other objections recorded by the principal sudder ameen are weighty, especially that relating to Mahomed Ali, a material witness, who states that he keeps books, employs mohurers, and yet has no record of the transaction with defendants, the niece of one of whom he married. I do not consider the plaintiff entitled to recover more than the money advanced, with interest. The suit was instituted just within 12 years of the date of contract, and for aught that appears on the record, the value of mustard seed

may now be manifold what it then was ; an award for fulfilment of the contract might be a grant of excessive damages, while plaintiff has already, of his own accord, accepted money as a partial fulfilment of their contract by defendants. The appeal is dismissed.

THE 10TH JUNE 1850.

No. 5 of 1850.

Regular Appeal from the decision of Moultee Ashruff Alee Khan, Principal Sudder Ameen, dated 7th December 1849.

Ramchunder Dey, (Plaintiff,) Appellant,

versus

Ramsoonder, Ramkant, Muheshchunder, the Collector of Chittagong, and others, (Defendants,) Respondents.

SUIT instituted on the 26th September 1845, for possession of 1 droon 8 kanees of land, with wasilat and interest, value for stamp rupees 779-7.

The plaint sets forth that, on the 10th Assar 1195, Ramjye purchased at the collector's sale turuf Munnohur Rae, (share of Doorga Kripa not included,) and sold an 8 annas share of the same to the plaintiff, both took possession; that a person named Brogoram had previously in 1137 M. S. purchased sundry lands, in all 5 d. 7 k. 3-1, in the estate, and that the same had been made into a separate turuf; that besides this turuf, Brogoram, and his descendants, after his death, held certain lands as ryots, and paid rent for the same to the former zemindars; when the estate was lately measured by the collector, they obtained possession of the whole of the land, amounting to 7 d. 7 k. 11 g. as turuf, noabad, and lakhiraj, of which 3 droons are in plaintiff's and his partner's share, but this last person refusing to be made a party to the suit, plaintiff now sues for his own share 1 d. 8 k., as will be shown by the chittas of 1126 M. S.

The defendants, Ramsoonder and Ramkant, deny the right of the plaintiff to sue. The estate was purchased by Ramjye, who, by not suing, admits he has no claim for rent on defendants, and, having none, could convey no right to the plaintiff; that defendants have held possession for many more than 12 years, and have never paid rent for the land in question. The defendants give details of the various acquisitions of land by Brogoram.

Muheshchunder and Hurreesoondree, defendants, heirs of a former proprietor, state that the other defendants never paid rent for the land held by them.

Hurreedass Rae, defendant, heir of a former zemindar, states, in his reply that, previous to 1153 M. S. (1791,) Brogoram paid rent to his ancestors, and that in the above year the land was transferred to Ruggoonundun, another proprietor.

The collector, in his defence, detailed the land measured as turuf, noabad, and lakhiraj, to the descendants of Brogoram, and subsequently filed a report, showing the extent with particulars of lakhiraj land in the mouzah.

The principal sudder ameen dismissed the suit, observing that Brogoram and his descendants had held possession of the land for many years, and that he had no confidence in the statement of plaintiff's witnesses, that rent had ever been paid by the defendants; that the collector's report shows the lakhiraj and noabad land, which are not therefore a part of the turuf, and that Ramjye, the auction purchaser, had not sued.

The plaintiff appeals, says that the chittas of 1126 clearly show the land to be his, and repeats generally his former statements.

JUDGMENT.

The issues raised in bar of hearing of this suit were :

First.—Whether the plaintiff possessed any proprietary right in the estate?

Second.—Whether in consequence of the defendants having been in possession of the property upwards of 12 years, the suit was not liable to be dismissed, on the ground of limitation under Section 14, Regulation III. 1793?

The first issue was fully answered by the plaintiff, who filed the deed of sale under which he held possession.

The proof tendered by plaintiff that, within 12 years previous to the institution of the suit, the defendants had paid rent as ryuts, to the former zemindars, was the evidence of 4 witnesses to the fact. Of these 4 witnesses, 2 were the plaintiff's own ryuts, and 2 inhabitants of the village. They deposed generally that the defendants had paid rent, but not to any particular payment. The plaintiff further quoted the reply of Hurree Dass Rae, as corroborative of the payment, but this party only asserts that such payments were made previous to 1153 M., (1791 A. D.,) and the heir of the person who succeeded in that year to the turuf denies that such payments were made to his predecessor. The plaintiff admits that no rent had been paid for upwards of 11 years and 11 months for the land, and that had he delayed to bring this suit one day only, it would have been barred under Section 14, Regulation III. 1793. His partner Ramjye, who has an equal interest with himself in enforcing any claims against the defendants, declines to become a party to the suit, and it does not appear that, during the long period of nearly 12 years, the plaintiff ever took any steps whatever to enforce the payment of rent by defendants, or to provide himself with any substantial proof that they held any part of their land as ryuts. There is no proof that plaintiff objected to the measurement of the land by the deputy collectors in 1839, and he himself asserts that he did so to the deputy collector only, not even having petitioned the collector or the commissioner.

The defendants have brought witnesses to the fact of their having always held the land they now occupy as proprietors, but the testimony of these witnesses is open to the same objection as that of the witnesses for the plaintiff; they are more or less dependants of the parties.

I cannot, under all the circumstances, consider the testimony of 4 partial witnesses sufficient proof that the defendants paid, at any time within 12 years previous to the institution of this suit, rent for any portion of the land they now occupy. I therefore dismiss the appeal, without entering further into the merits of the case.

THE 10TH JUNE 1850.

No. 9 of 1850.

Regular Appeal from the decision of Moulvee Ashruff Alee Khan, Principal Sudder Ameen, dated 14th December 1849.

Ram Hurry, (Defendant,) Appellant,

versus

Mitthun Jae and Rammonee, (Plaintiffs,) and Musst. Saugundee, the Collector of Chittagong, and others, (Defendants,) Respondents.

SUIT instituted on the 18th March 1847, for rupees 697-2-7, balance of proceeds of sale of an estate, with interest thereon.

The plaint set forth that the father of the plaintiffs, Ramkant Podar, had purchased under two separate kubalas, dated the 3rd Bysakh 1195, and 6th Phalagoon 1200 M. S., 2 d., 7 k., 10 gs., of land, turuf Neshun Muzkooree, of Kaleechurn; that the entire estate was put up to sale by the collector, and sold on the 3rd May 1842, for rupees 601; that after deduction of the Government demand, rupees 576, 8 annas, 2 pie, remained in deposit, of which plaintiff's father claimed rupees 442, 2 pie; but that owing to the existence of other claims, the collector refused payment. Ramkant Podar died in 1205, and his heirs, the present plaintiffs, bring the action.

The defendant, Ram Hurry, who first complained that he had been wrongly described as the son of Juggernath, whereas his father's name was Mooktaram Sein, admitted the circumstances of the sale, but stated that he had purchased 2 d., 1 k., 12 of the share of Kaleechurn in the turuf, and that rupees 215-9, of the money deposit, belonged to him.

Trayer Ram claimed a half share in the purchase of Kaleechurn, by Ramkant, stating he was the brother and half partner of the deceased.

Rammanik Buddhya, for self and Ramchurn, claimed one-third of the proceeds, his father having been owner of so much of the turuf.

Musst. Saugundee stated that her deceased husband paid a jumma of rupees 6-8 for part of the estate, and claimed her share of the proceeds.

The collector admitted that the surplus proceeds of the sale, amounted to rupees 576-8-2, but that he had paid rupees 80-8, to Mahomed Tukkee, on a kyfeut, but for the payment no satisfactory reason was given.

The principal sudder ameen disallowed all interest, as the payment had been refused by the collector in consequence of the disputes of the claimants. He disallowed the claim of Ram Hurry, allowed the payment to Mahomed Tukkee, and distributed the balance in the collector's hands, rupees 496-2, among the other claimants.

Ram Hurree defendant appealed, stating that he had purchased a portion of Kaleechurn's share in the estate prior to the sale by that person to plaintiff's father, and repeating his other allegations.

JUDGMENT.

The principal sudder ameen does not appear to have sufficiently inquired into the several claims of the plaintiffs and defendants. The proof tendered by Rammanik of his rights to one-third share as representative of his father Juggernath is very weak; and by the taidad filed with the case, the share of Juggernath consists of k. 3-16, paying a jumma of rupees 4-9-17 only. If one claimant, Musst. Saugundee, paying rupees 6-8, is to share according to the jumma paid by her, all ought to do so. No authentic record of the area, or of the jumma of the estate is to be found with the missil. The collector has given no reason for the payment of rupees 80-8 to Mahomed Tukkee, and it appears that many claimants objected to that payment. I reverse the order of the principal sudder ameen, and remand the case for further inquiry into the share of the net proceeds, 576-8-2, which each shareholder is entitled to receive.

THE 14TH JUNE 1850.

No. 10 of 1850.

Regular Appeal from a decision of Moulvee Ashruff Alee Khan, Principal Sudder Ameen.

Mitthun Jae and Rammonee, (Plaintiffs,) Appellants,

versus

Ram Hurry, the Collector of Chittagong, and others, (Defendants,) Respondents.

THE same case as the foregoing and the same order.

THE 14TH JUNE 1850.

No. 11 of 1849.

Regular Appeal from the decision of Moulvee Ashruff Alee Khan, Principal Sudder Ameen, dated the 28th August 1849.

Mahomed Reza, (Plaintiff,) Appellant,

versus

Deena Monee, Musst. Joonsee, Dataram, Ramlochun, Futteh Ali, and others, (Defendants,) Respondents.

SUIT instituted on the 24th June 1848, for possession of d. 3 k. 12 of land, with mesne profits, value for stamp rupees 634.

The plaint set forth that Mahomed Reza was the proprietor of an hereditary talook, consisting of 1-9-18-3, gunjaesh, not included in turruf Noichunna. That on the 11th Chyete 1188 M. S., Brijnath and Deena Monee had given to plaintiff and his uncle Renoo, an acknowledgment binding themselves to cause 2 tumusooks for rupees 500 to be cancelled, in return for which they were to receive 18 kanees of land, or should they fail in cancelling the bonds, that the sale of the land was to be considered cancelled. That plaintiff himself and his uncle, subsequently cancelled the tumusooks, having raised the money by sale of property, and that now the defendants in concert with plaintiff's uncle, claim possession of land under the following kuballas :

1 dated 17th Aughun 1188 for 12 kanees.

1 „ 6th Maugh 1188 „ 6

1 „ „ 1190 „ 7 18 3

That defendants have now sued plaintiff and his ryuts for rent under these kuballas. Plaintiff further quotes orders of the courts considered to be proof in his favor.

The defendants claim the land, under the kuballas quoted by plaintiff, as their own, and state that the case was disposed of on the 25th May 1842, on a suit brought by plaintiff.

The plaintiff rejoined that the 3 kuballas had been pronounced false by the court.

The principal sudder ameen dismissed the suit, quoting the several dates on which the questions now raised by plaintiff had previously been disposed of.

The plaintiff appeals, explaining how the former suits were disposed of, and alleging that all the evidence had not been taken, and that former decrees had not determined plaintiff's right.

JUDGMENT.

Plaintiff sued formerly that the 3 kuballas of 27th Aughun and 6th Maugh 1188 and 1190, for 1-9-18-3, might be declared false and forged; but on the 25th May 1842, the principal sudder ameen declared the kuballas valid, thus disposing of plaintiff's right to the

land of which defendants have now possession, under these documents. No evidence was tendered by plaintiff which was not taken, and the present seems a mere attempt to disturb the former decisions of the court. I quite agree with the principal sudder ameen in the propriety of dismissing the plaint under Section 16, Regulation III. 1793, and only regret that a fine for having instituted a frivolous and vexatious suit was not inflicted by the lower court.

THE 20TH JUNE 1850.

No. 12 of 1850.

Regular Appeal from the decision of Moulvee Ashruff Alee Khan, Principal Sudder Ameen, dated 21st December 1849.

Burmoo Mohee, (Plaintiff,) Appellant,

versus

Fusl Ali Khan, Munnoo, Mogul Chand, Oomed Ali, Kalachand, Aman Ali, Lodhee, and the Collector of Chittagong, (Defendants,) Respondents.

SUIT instituted on the 12th November 1847, for cancelment of the settlement of 2 d., 12 k., 2 gds., 2 c. of land with Fusl Ali Khan, and settlement of the same with plaintiff; value for stamp rupees 456-11.

The plaint set forth that plaintiff's husband (deceased) had purchased, in the name of his servant, Muddun Mohun, a talook called Sadut Oollah, in chur Briethullee, consisting of d. 12 6-5, at a sudder jumma of rupees 23-5-6. That the land was on the tank of the Sungkateenullah, and increased yearly by silt. That an ameen sent by the moonsiff found the incremental increase in possession of the defendants to be 2 d., 12., k. 3 gds. 2. That a suit was brought under the name of Muddun Mohun, and the principal sudder ameen ordered his name to be registered as proprietor. That on appeal to the judge, that officer directed the ryuts to pay rent to the nominal plaintiff Muddun Mohun, and the plaintiff to settle for the jumma with the collector. That plaintiff's husband died in 1198 M. S., and that Muddun Mohun had given an acknowledgment, or ikrar, that he had no right to the land and had relinquished the management of it, but that notwithstanding the judge's order the deputy collector on the 4th August 1837, settled the land with Fusl Ali Khan, calling it a part of Busharut Nugger. That plaintiff in vain applied to the collector and commissioner, and now sues that the former order of the court may be enforced.

The defendant, Fusl Ali Khan, claimed the land as belonging to Busharut Nugger, and denied the right of plaintiff, or that she, her husband, or Muddun Mohun ever had possession.

The other defendants replied to the same effect, and observed that plaintiff claimed under the court's order of 23rd October 1835.

The principal sudder ameen dismissed the suit, observing that from the 23rd October 1835 to 12th November 1847, was 12 years and 20 days, and that the suit was barred under Section 14, Regulation III. 1793. That plaintiff's husband had formerly sued benamee, contrary to the Circular Order of 29th July 1849, and that Muddun Mohun, who was at one time made a defendant, could not be found.

The plaintiff appealed, stating that the 23rd October 1849 fell during the Dusserah vacation, and that if this be taken into account she brought the suit within 12 years, as it was filed on the day the court opened. That Muddun Mohun's residence was wrongly designated, and that the 12 years should be reckoned from the date of the settlement, not from that of the judge's decree.

JUDGMENT.

The first point for consideration is whether the suit is barred under Section 14, Regulation III. 1793.

The judge's order is dated 23rd October 1835, and as the plaintiff was on that day fully aware of her rights it is from that date, not from the date of settlement, that the 12 years must be taken. The court was open on the 11th November 1847, and as the suit was filed on the following day (the 12th) the period of 12 years was, after allowing for the vacation, exceeded. No reason has been assigned for the delay, and I therefore dismiss the appeal.

THE 20TH JUNE 1850.

No. 13 of 1850.

Regular Appeal from the decision of Moulvee Ashruff Alee Khan, Principal Sudder Ameen, dated 24th December 1849.

Runjeetram and Ramkant, (Defendants,) Appellants,

versus

Ramsoonder, (Plaintiff,) Respondent.

Suit instituted on the 30th May 1848, for possession of d. 3-1-9 of land, with mesne profits; value upees 1282-11-6.

The plaint set forth that plaintiff was the hereditary proprietor of d. 5-3-2-3 c., of burmoothur land called Beestoram Saduntha. That the late proprietor had granted as a talook to Hurree Ram Muhajun 3 d. 1 k. of the said land. That on the death of Hurree Ram, Runjeetram and three other sons succeeded to the talook. These three are now dead, having been succeeded by Mitthun Jae, also deceased, and Ramkant, who and Runjeetram are the present representatives of Hurree Ram. That by the present measurement

the land was found to consist of d. 3-1-9, and was measured as the property of plaintiff, but as the etmam of the defendants. That Runjeetram and Mitthun Jae both, in a petition to the collector, admitted payment of the rent of the land to plaintiff. The defendants subsequently endeavoured to obtain possession as owners; but that after repeated applications to the revenue authorities the possession and right of plaintiff were fully established, and the land settled with him. That since 1200 M. S., the defendants have refused payment of all rent, for which plaintiff now sues.

The defendants denied any right in the plaintiff, they affirmed the land to have been obtained by purchase, but stated that the kuballa had been burnt. That the chittas of measurement are wrong. That they had paid the jumma assessed on the land, but had never paid rent to the plaintiff, whom they have sued in the moonsiff's court. The principal sudder ameen decreed for the plaintiff, on the ground that the land was measured as his burmoo-tur, and was settled with him as proprietor by the collector. That though the defendants plead the purchase and possession for more than 12 years, there is no proof either of the purchase or of the proprietary right for 12 years. That in 1834 and 1838 the then owners of the talook, admitted in a petition to the collector that they paid rent to the plaintiff's father. As however the plaintiff admitted that the defendants were talookdars, he allowed wasilat at the rate of 1 rupee per kanee only.

The defendants appealed, repeating their assertions, and stating that as they had been upwards of 12 years in possession the plaintiff's suit was barred under Section 14, Regulation III. 1793.

JUDGMENT.

The land, the subject of the present action, was the property of the plaintiff. It was measured to him by the collector, and when resumed a settlement made. The defendants in this action were then recognised as inferior talookdars. They themselves admitted in petitions to the collector that they paid rent to the plaintiff's father, and have not been able to adduce any proof of right beyond that of occupancy. They have certainly held possession for more than 12 years, but Runjeetram's durkhast, dated 16th Chyete 1242, (1838 A. D.,) is filed with the case, proving that at that time he paid rent to the plaintiff. I can only dismiss the appeal.

THE 20TH JUNE 1850.

No. 14 of 1850.

Regular Appeal from the decision of Moulvee Ashruff Alee Khan, Principal Sudder Ameen, dated 26th December 1849.

Runjeet and Ramkant, (Plaintiffs,) Appellants,

versus

Ramsoonder and the Collector of Chittagong, (Defendants,) Respondents.

SUIT instituted on the 18th November 1848, to cancel the settlement, dated 30th June 1846, and the orders of the collector and commissioner in regard to d. 1-14-16-2, lakhiraj bazafttee land, the correction of the chittas, and settlement of the same with plaintiffs. Value for stamp, rupees 47.

The plaintiffs claimed the land and settlement for reasons set forth in their reply to the plaintiffs (defendants in this suit) in the foregoing case No. 13, which having been given against the present plaintiffs, the suit can only be dismissed.

THE 20TH JUNE 1850.

No. 15 of 1850.

Regular Appeal from the decision of Moulvee Ashruff Alee Khan, Principal Sudder Ameen, dated 26th December 1849.

THE same plaintiffs bring a similar suit for the settlement of 1-2-12-3, settled with defendants on the 12th February 1846.

The same order was passed.

THE 20TH JUNE 1850.

No. 93 of 1850.

Regular Appeal from the decision of Moulvee Abdool Jubbur, Moonsiff of Isapore, dated 15th January 1850.

Ariff Shaha, (Defendant,) Appellant,

versus

Jan Ali, (Plaintiff,) and

Beerbharuthee Zemindar, (Defendant,) Respondents.

SUIT instituted on the 7th April 1849, for possession of one kanee of land and wasilat, for the value of 22 jack trees and one house, total value 64 rupees.

The plaintiff stated that his father, Mahomed Moonshee, had succeeded to an hereditary talook under the mohunts and zemindar; but that at the time of his death one kanee only, held at a rent of 10 annas, still remained in Mahomed Moonshee's possession; that Mahomed Moonshee died in 1199 M. S., leaving the plaintiff a minor, and a widow, Sukeena Beebee; that in 1203, the defendant Ariff Shah obtained possession of the land, cut down the trees, and destroyed the house; that plaintiff came of age in 1210, and now sues to recover his ancestral property.

The defendant Ariff Shah stated that he took the talook of the zemindar on the 10th Bysakh 1203, at 4 rupees nuzzerana and a yearly rent of 10 annas; that he was shortly afterwards sued by Soya Beebee, calling herself the widow of Mahomed Moonshee, for 9 gundahs as her dower, but that the suit did not come to trial; that he (defendant) had built a house on the land, but denies that he disposed any party whatever.

Bcerbharuthee Mohunt stated that for 5 years previous to his death, Mahomed Moonshee had paid no rent for the land; that the land being waste, and no rent paid for 8 years, he let it to Ariff Shah; that the land is wrongly described, it consists of 14 g. 2 c. and a separate patch of 4 g. 2 c., total 19 gundahs.

The moonsiff decreed for the plaintiff, whom he considered entitled to his ancestral talook according to the custom of the country: he reduced the estimated value of the trees, and allowed rupees 19-8-10, with rent to date of possession.

The defendant appealed, repeating his former allegations, and asserting that for five years previous to his death plaintiff's father paid no rent, that on his death the land was waste for three years until cultivated by defendant.

Plaintiff replied that on his father's death the rent of the land was paid by the widow.

JUDGMENT.

The plaintiff's witnesses, the only proof he has, partially admit that the land was waste and neglected previously even to the father's death, there is no proof of the payment of rent for the years previous to 1203, the date of the defendant's lease. The plaintiff has offered no proof of any hereditary right but that of occupancy, which by non-payment of the rent and allowing the land to be waste his family has forfeited. I cannot admit it to be incumbent on the zemindar to let the land lie idle on the chance that, when he comes of age, the minor son of the late occupant may claim it, but consider in this case that the owner only acted properly in leasing it to another party. I decree the case to the appellants, with costs in both courts.

THE 20TH JUNE 1850.

No. 8 of 1850.

Regular Appeal from the decision of Moulvee Ashruff Alee Khan, Principal Sudder Ameen, dated 13th December 1849.

Abdool Ali, and Mussts. Shuruful Nessa, Sufsal Nessa and Bud-deul Nessa, (Plaintiffs,) Appellants,

versus

Musst. Haree Beebee, Mahomed Dacim, Noorjehan Begum, the Collector of Chittagong, and others, (Defendants,) Respondents.

SUIT, instituted on the 20th February 1846, to cancel the sale by the collector, also the roobakaree and khuthean, and that the defendants be deprived of the settlement, and the settlement made with plaintiffs of d. 2-2-11-2 of noabad land, value rupees 363-8-6.

The plaintiffs stated that they held a portion of d. 9 k. 5-3-2 of lakhiraj bazaftee, junglebooree, and noabad land in mouzali Gourlundee. That a settlement was effected by the collector, who transferred d. 2 k. 11-2, of their noabad land to the lakhiraj held by Haree Beebee, and entered into engagement with her for payment of revenue on d. 4 k. 3. That by changing the numbers of the dags, the deputy collector concealed the fact of plaintiff's possession, and that he, the deputy collector, falsely reported, on the 29th December 1844, that the quarrels in the village had been settled. That Haree Beebee, with whom the d. 4 k. 3 had been settled, allowed the land purposely to fall into arrear, and that, though plaintiffs petitioned the collector on the subject on the 19th November 1845, the collector, on the 26th of the same month, sold the tenure for arrears of revenue, and that Mahomed Dacim became the purchaser at 501 rupees. The plaintiffs therefore sue, that the whole of the proceedings of the revenue authorities be reversed, and that they put in possession of the land.

The defendant, Mahomed Dacim, replied that he bought the land at a sale by the collector, that the parties did not appeal to the commissioner, and that therefore, under Section 24, Act I, 1846, the sale was valid.

Haree Beebee, defendant, replied that the land forms a part of 4-3, settled with her and sold. That if plaintiffs were desirous of reversing the sale, they should have laid the value at rupees 501, the amount of the proceeds. That when the estate was advertised for sale, the plaintiffs, if they had claims to the land, should have deposited the balance with the collector.

Noorjehan Begum, defendant, said she had transferred some land to Noorjehan, mother of Haree Beebee, to which plaintiffs had claim.

The collector stated, in defence, that the land consisted of d. 3 k. 2-0-1, Keirath Mahomed Sugeer, and 6-3-3-1, noabad. That

the plaintiffs had engaged for 1 d. k. 5 gs. of lakhiraj bazaftee and 2-3-1-1, as noabad, besides k. 8-1 settled separately, and that the remainder d. 59-16-1, was settled with Noorjehan Begum and Haree Beebee. When called on to explain further the tenure of 4 d. 3 k., sold for arrears, the collector stated that two settlements of the d. 59-16-1 had been made with Haree Beebee, viz., one settlement for 4 d. k 3., and the remainder included in a larger tenure of d. 17-8-19-1. The collector further stated that the plaintiffs had not appealed against the sale to the commissioner.

The plaintiffs rejoined that they did appeal to the commissioner, and repeated their allegations.

The principal sudder ameen decided that the plaintiffs had not appealed the sale to the commissioner in the regular form, and also that the plaintiffs had a right to the settlement of the land in question; but that the estate having in the meantime been legally sold by the collector, it could not be given back to plaintiffs. He gave the land to plaintiffs as talookdars under the purchaser, at rent of 1 rupee per kanee, leaving each party to pay his own costs.

The plaintiffs appealed, claiming the land as their own property, repeating their assertions, and claiming costs.

The defendant, Mahomed Daeim, also petitioned the court. He stated that the land was held for 8 years by Haree Beebee as lakhiraj bazaftee; that the grant of the talook tenure by the principal sudder ameen was contrary to Construction No. 1272, as the rent for one year was not fixed: he further prayed that under Construction No. 868 the whole judgment of the lower court might be reviewed.

JUDGMENT.

This suit when originally brought was dismissed by the principal sudder ameen, but, on appeal to the additional judge, that officer remanded it for re-trial on the 12th June 1849, (see Mofussil Decisions for that month, page 155,) on the ground that the whole of the collector's proceedings were irregular, and directed that the suit should be decided as if no sale of the lands had taken place.

The first issue in law is whether the plaintiffs did or did not appeal the sale by the collector to the commissioner. The petition of appeal was sent to the commissioner by dâk, and rejected. The Sudder Court has decided that such a petition is not an appeal, (see Decisions for 1847, page 348;) but the additional judge having ordered the case to be tried as if the sale had not taken place, I do not consider myself competent to dismiss the suit without entering into the merits of the case.

The second issue is whether the value is correctly laid. The estate was sold for rupees 501, and the suit is bought for 363-8-6. This last valuation is according to Construction No. 1143, and as the sale of the estate for 501 may have been owing to competition alone, and the value laid is strictly in accordance with the rule, I decide the point in favor of plaintiffs.

The material issue of fact is whether the collector did, or did not sell the property of the plaintiffs for a balance of revenue due by the defendant Haree Beebee. The chittahs of measurement show the land to be turuf Haree Beebee, talook Shadoo, occupant Osmut-oollah, the predecessor of plaintiffs, but without specification of proprietary right. It appears from the collector's proceedings, and from the admission of the parties, that several settlements were made of the land resumed or declared noabad in the mehal on the 25th April 1838. With the plaintiffs two settlements were made, one for d. 3-3-6-2 and another for 8 k. 1 g., the rest of the land being settled with Haree Beebee or Noorjehan Begum. In making these arrangements, the collector appears to have acted under Section 14, Regulation VII. 1822, extended to the Lower Provinces by Regulation IX. 1825, and to have decided the rights of the various holders of the noabad and lakhiraj land in mouzah Gourdundee. If he exercised this power in an arbitrary or unjust manner, and his proceedings are not free from objection, the plaintiffs should have sued him, but instead of doing so, they acquiesced in the settlement from April 1838 until the sale of the estate in November 1845.

If, under the regulation above quoted, the collector had power to assess the estate or estates, it necessarily follows that he had authority to collect the revenue from the zemindars, and to enforce payment in any way sanctioned by the regulations or acts. He did so, and sold the estate of Haree Beebee.

The plaintiffs urge that d. 2-2-11-2 were separated from their talook and transferred to Haree Beebee. It is not clear that any such transfer was made, or when. The roobakaree of the deputy collector, dated 29th December 1844, merely stated that he had settled the disputes in Gourdundee, and gives the quantity of land in possession of several owners. If any land was transferred it certainly was not that which had been settled with plaintiffs, but must have been some to which their right had not been acknowledged by the collector. Plaintiffs admit that they have even now possession of the tenures settled with them. If they had a right to hold more as owners, they should have disputed the collector's proceedings at the time of settlement. Objections to the settlement cannot be pleaded in bar of a sale for arrears of revenue under Act I. 1845. The collector has not, I consider, sufficiently detailed the reasons which induced him to make the several settlements in mouzah Gourdundee, or the object in deputing a deputy collector to the village for the settlement of disputes, of the existence or nature of which there is no record; but he has not exceeded the power entrusted to him by Regulation VII. 1822, and the plaintiffs have to show that they took the proper steps to secure the settlement of the land with themselves during a period of nearly eight years previously to the sale.

The order of the principal sudder ameen in the case is objectionable. He has given the plaintiffs a right which they did not claim,

viz., that of dependent talookdars, while they sue to become sudder malgoozars. He does not reverse the sale, but if this is legal, the dependent talook becomes a ryuttee tenure only.

I reverse the orders of the principal sudder ameen, and dismiss the suit both original and in appeal. The plaintiffs will pay all costs in the lower court and their own, incurred in the judge's court. The defendant who appeared unsummoned will pay his own costs before the judge.

THE 26TH JUNE 1850.

No. 162 of 1849.

Regular Appeal from the decision of Mr. Hutchinson, Moonsiff of Putteah, dated 10th February 1849.

Musst. Chundrareeka and Hur Dass, (Defendants,) Appellants,
versus

Ram Churn Purohit, (Plaintiff,) Respondent.'

SUIT instituted on the 5th May 1848 for possession of 1 kance of lakhiraj land, value	42	12
and wasilat for one year,	2	6

Total,... 45 2

The plaintiff stated that on the 19th Bysakh 1206 he purchased of Chundrareeka one kance of lakhiraj land for 21 rupees, that he received a kuballa and amuldaud chittee on which he obtained possession of the land, but that in 1209 M. he was forcibly dispossessed by Bocha Ghazee, a defendant in the original suit before the moonsiff.

The defendants (appellants) denied that they had sold the land to plaintiff. It formed a part of the lakhiraj tenure formerly the property of the husband of Chundrareeka and father of Hur Dass, who has succeeded to it. Hur Dass is 37 years of age and manages the land. Chundrareeka, his mother, has no power to sell her son's property. The shasters will not allow of her doing so. There is an old quarrel with plaintiff, who refused to perform the funeral rites over defendant's sister.

Bocha Ghazee stated that he held the land of the defendants, that plaintiff had attached his property for rent, and that the case was undetermined.

The moonsiff decreed for the plaintiff, considering that the land had been sold by the defendants (appellants,) who now, under pretence that the sale was contrary to the shasters, wish to evade their engagement.

In appeal, the defendants repeat their allegations, deny any power in Chundrareeka to sell the land, and state that Hur Dass was absent from the country when the kuballa is said to have been signed.

JUDGMENT.

The kuballa is signed Chundrareeka, bu-kulm Hur Dass, and is no doubt genuine. Hur Dass appeared in court and made several statements quite contradictory one of the other. The land is evidently the property of Hur Dass, since the death of his father, and he was a consenting party to the sale by his mother. It appears that Hur Dass has always managed the land while his mother remained nominal owner. I cannot allow him to profit by his own fraud by annulling the sale.

Several witnesses were summoned to this court, and it appears that some considered the deed to be one of mortgage, not of absolute sale. As both parties agree to the arrangement, I will modify the order of the moonsiff, and allow Hur Dass and Chundrareeka one month from the date of this decree either to pay 21 rupees, with legal interest to date of payment to the plaintiff, from the date he was dispossessed of the land, or to give up possession of the same and account for the mesne profits.

All costs in both courts to be paid by defendants (appellants.)

THE 27TH JUNE 1850.

No. 103 of 1850.

Regular Appeal from the decision of Moulbee Abdool Futtah, Moonsiff of Deaang, dated 22nd January 1850.

Kistookaunt Dutt, (Defendant,) Appellant,

versus

Obcedoollah Khan, (Plaintiff,) Dowlut Beebee, and Mahomed Noazish, (Defendants,) Respondents.

SUIT instituted 20th January, for possession of 3 k. 19, 3 c., of land, with wasilat and interest, rupees 136-2-7.

The plaintiff stated that he, the zemindar of a share $3\frac{1}{2}$ annas of turuf Zuber dust Khan, had succeeded, on default of the proprietor Gholam Hosein, to the possession of talook Ashruff. That the actual occupants of the above land k. 3, gs. 19-3, Dewan Ali and Mahomed Noazish, had subsequently allowed it to be sold in execution of a decree of court. That it was purchased by Kistokaunt Dutt, the defendant and appellant, who had refused payment of rent since 1204.

The defendant, Kistokaunt Dutt, admitted the purchase by him of the property of Dewan Ali, (deceased, husband of Dowlut Beebee,) and Mahomed Noazish also that plaintiff was a shareholder in the estate of the extent of $3\frac{1}{2}$, but denied that he was entitled to rent previous to 1209, and asserted that plaintiff had refused to receive payment of his due, through enmity to him, the purchaser.

Golab Beebee, Mehr-ul-nissa, and Suffee-ul-nissa, defendants in the original suit, stated that they purchased the talook Ashruff, on default of the proprietor, that it was subsequently let to Maughun Dass, talookdar.

Plaintiff rejoined that the land was never let to Maughun Dass.

The moonsiff decided that the defendant Kistokaunt Dutt, as successor to Mahomed Noazish and Dewan Ali, was liable to a rent of Sicca rupees 10, of which rupees 4-5-2 were due to plaintiff as owner of $3\frac{1}{2}$ annas share, and the balance to the proprietors of the 5 annas share, that the rent was payable from the date Dewan Ali was dispossessed: he therefore decreed the case, including interest for 32-12-5, with costs.

The defendant, Kistokaunt Dutt, appealed, repeating his assertions, denying that rent was due previous to 1209, and, quoting the precedent of Deyal Singh *versus* Buktawur Panday, 13th July 1847, denied that he was liable for the whole of the costs.

JUDGMENT.

The defendant (appellant) is evidently liable for the rent from the date on which he obtained possession, which has been shown to have been from the date of the ejectment of Dewan Ali. The moonsiff should not have decreed the whole of the costs, but only in proportion to the verdict, and I therefore modify the decree so far, and direct that the costs be levied from defendant and appellant, with reference to the amount awarded to plaintiff. Each party will pay his own costs of appeal.

ZILLAH CUTTACK.

PRESENT: M. S. GILMORE, Esq., JUDGE.

THE 3RD JUNE 1850.

No. 1 of 1850.

*Appeal from the decision of Moonshee Gureeboollah, Sudder Ameen of
Balasore, dated 14th February 1850.*

Baboo Dhunardhun Misser, (Plaintiff,) Appellant,

versus

Gopeenath Bearah and Punchoo Bearah, (Defendants,) Respondents.

CLAIM, rupees 200, principal, and rupees 147-6-4-16, interest, of a bond, dated 17th Assar 1250 U. Suit instituted 14th August 1849.

The plaint sets forth that, on the date in question, the defendants borrowed from Poornanund Mungraj Mahapatur, *tuhveeldar* of the plaintiff, the sum of rupees 200, and promised to repay it in the month of Bechar or Aughun following, and executed the bond; but they had failed to pay it, and he in consequence sued them.

The defendants denied borrowing the money or executing the bond, and stated that the plaintiff had been instigated by his uncle, Chowdry Lokenath Nessunk Mahapatur, to institute the present false suit, with the view to get possession of their property, mouzah Simleah, which is recorded in the collectorate in the name of their eldest brother, Doolye Bearah, deceased; he, the said Chowdry, having previously attempted to get possession of it, on the plea of its having been sold to him by Birpo Bearah, the minor son of Doolye Bearah, for the sum of rupees 1600, and his claim thereto having been rejected by the deputy collector, on the *mozahim* of the defendants and other joint shareholders, when he applied to have his name recorded as proprietor in lieu of that of Doolye Bearah.

The plaintiff replied that, although he and Chowdry Lokenath Nessunk Mahapatur resided together, no co-partnership existed between them.

The moonsiff was of opinion that the suit was false and had been instituted by the plaintiff in collusion with Chowdry Lokenath Nessunk Mahapatur, who was at enmity with the defendants—Poornanund Mungraj, through whom, the plaintiff alleges, he lent the money, being the servant of the said Chowdry Lokenath

Nessunk Mahapatur ; and distrusting the evidence of the other witnesses, who deposed to the execution of the bond by the defendants, because they resided at a distance from the plaintiff's house, he dismissed the claim.

JUDGMENT.

As all the witnesses to the bond are dependants, or ryuts of Chowdry Lokenath Nessunk Mahapatur, and the plaintiff, who is his nephew, resides with him, I cannot place implicit reliance on their testimony ; for it appears from the copy of the deputy collector's roobakaree of the 25th March 1845, filed by the defendants, that the said Chowdry Lokenath Nessunk Mahapatur previously fabricated a *kuballa* purporting that the whole of mouzah Simleah had been sold to him by Birpo Bearah, the son of Doolye Bearah, when there were numerous other joint proprietors ; and that, on his applying to have his name recorded in the collectorate records, the *kuballa* or deed of sale, was set aside, in consequence of the opposition of the defendants and the other shareholders ; there is therefore strong grounds for believing that, as alleged by the defendants, Lokenath Chowdry has fabricated the *tumusook*, and instituted the present suit through his nephew, with the view to bring the defendants' rights and interests in the property to sale, in order that he might purchase them himself ; for if the bond had really been executed at the time alleged, viz., 17th Assin 1250, corresponding with the 29th June 1843, he would doubtless have sued the defendants immediately after they had opposed the registration of the property in his name and procured the dismissal of his application by the deputy collector on the 25th March 1845, and not have delayed to do so until four years afterwards. I therefore see no reason to interfere with the decision of the sudder ameen, and consequently dismiss the appeal. The appellants will pay both his own and respondent's costs.

THE 3RD JUNE 1850.

No. 28 of 1850.

Appeal from the decision of Moheshchunder Roy, Moonsiff of Dhamnugur, dated 1st March 1850.

Gopenath Debta, (Defendant,) Appellant,

versus

Neelkanth Debta, (Plaintiff,) Respondent.

Mahababoo *alias* Fakcer Debta and Radhabullub Debta, Defendants, absent in appeal.

CLAIM, Sicca rupees 27-1, with interest to the same amount, total Sicca rupees 54-2, or Company's rupees 57-11-8-16, on a dakhilla, dated 22nd Kartikh 1245 U. Suit instituted 17th August 1849, corresponding with the 3rd Bhadoon 1256 U.

The plaintiff states that Kishen Debta borrowed from him the sum of Sicca rupees 20, and died before he had repaid it, leaving Gopeenath Debta and Mahababoo *alias* Fakeer Debta, his sons by his first wife, and Chintamony Debta, Bhugwan Debta, (both of whom have since deceased,) and Radhabullub Debta, sons by his second wife, his heirs; and that, on his demanding payment from them, Gopeenath Debta, the eldest, with the consent of his brothers, executed a *dakhilla* on a *talpatro*, or palm leaf, promising to pay him Sicca rupees 27; but he afterwards neglected to fulfil his engagement, and he in consequence sued him and the other heirs of Kishen Debta.

Gopeenath Debta, defendant, states that he was absent from home at the time the *dakhilla* is alleged to have been written, and that his father was in easy circumstances and not indebted to any person, and the plaintiff had not the means of lending money. He also points that it is only customary to execute *dakhillas* when one person becomes security, or engages to pay the debt of another within very limited periods, whereas the *dakhilla* filed by the plaintiff is represented to have been written eleven years, nine months, and twenty-one days prior to the institution of the suit; and the plaintiff had omitted to show why he alone executed the *dakhillas* though, according to his statement, his brothers were equally liable for the sum claimed.

Mahababoo *alias* Fakeer Debta and Radhabullub Debta, defendants, filed an answer to the same effect as the above.

The moonsiff was of opinion that the execution of the *dakhilla* on the part of Gopeenath Debta was proved by the evidence of two attesting witnesses, and two other persons, who deposed that they were present at the time of the adjustment, or when he promised to pay the money. And mistrusting the evidence of the witnesses cited by Gopeenath Debta, who deposed to his having been at Balasore when the document was written, he decreed the plaintiff's claim against all the defendants, on the grounds that none of them claimed exemption, in consequence of the *dakhilla* having been executed by Gopeenath alone.

In appeal, the defendant, Gopeenath Debta, in addition to the pleas set forth in his answer, filed before the lower court, urges that the plaintiff did not assert that any document, to prove that his father had borrowed the money, was adduced at the time the *dakhilla* is alleged to have been executed by him; and that although he stated, in reply to the moonsiff's question, that he did not exactly know when his father had borrowed it, he said that he did so 8 or 9 years before his death, when he, the plaintiff, was only 12 years of age, and that the *dakhilla* was not written till 8 or 9 years after he died, thereby admitting that a period of upwards of 29 years elapsed between the alleged contraction of the debt, and the institution of the suit. And these circumstances, coupled with

the fact of the *dakhilla* being written on a palm leaf instead of on stamp paper, cast great doubts on the genuineness of the *dakhilla*, and I do not consider the evidence of the witnesses, who have deposed to its execution by the appellant trustworthy. And it is in consequence ordered, that the appeal be decreed, and the decision of the lower court reversed. The respondent will pay the appellant's costs in both courts, with interest to the date of payment.

THE 7TH JUNE 1850.

No. 29 of 1850.

Appeal from the decision of Moonshee Gureeboollah, Moonsiff of Balasore, dated 6th March 1850.

Sistidhur Rai Mohasoy, (Plaintiff,) Appellant,

versus

Rajkishore Dey, Chaitun Mhaintee, and Abheernath, (Defendants,) Respondents.

CLAIM, rupees 193-6-11, viz., rupees 122-1-5, the value of 122 poutees, 1 goon, 15 biswas of dhan, at 1 rupee per poutee, and rupees 71-5-6, interest from the 5th Phalgoon 1251 to 19th Poos 1256 U.

The plaintiff states that he first borrowed the sum of rupees 100 from Rajkishore Dey, defendant, for which he executed a bond, and some time afterwards, his ryut, Abheernath Cuttoah, also borrowed from him a similar sum on his security, which was to be repaid in *dhan* at the rate of 1 poutee, 2 goons, 8 biswas per rupee; and that Rajkishore Dey, at the same time, told him (the plaintiff) that if he would deliver a quantity of *dhan* at his granary at Nulteegeher, equivalent to the sum due by him, at the rate of 1 poutee, 2 goons, 8 biswas per rupee, he would return the bond executed by him; that he accordingly delivered 122 poutees, 1 goon, 15 biswas of *dhan* through Abheernath, and got 18 receipts for the same; but that, on his demanding the bond from Rajkishore Dey, he denied having received the money or the *dhan*, and the case was referred to arbitration, when Chaitun Mhaintee, the gomashtha of Rajkishore Dey, acknowledged the receipts with the exception of one or two, regarding which he said he could give no answer until he had consulted Abheernath. And when he afterwards produced his accounts before the arbitrators, it appeared that he, in collusion with Abheernath, had appropriated rupees 50, belonging to his master, Rajkishore Dey, and credited *dhan* to the same value, which had been delivered to him by the plaintiff, through Abheernath, in lieu thereof; thus making it appear that a balance to that amount was due from him, and the arbitrators being unable to adjust the quarrel, Rajkishore Dey instituted a suit No. 288 against him in the moonsiff's court for the amount of his bond, and, on his pleading the delivery of the

dhan in payment thereof, the moonsiff decreed his claim, as the bond contained no mention of the arrangement regarding the *dhan*, and informed him that if he thought fit he could sue for the value of the *dhan*, and he had accordingly instituted the present action against him.

Rajkishore Dey, defendant, pleaded that as the receipts for the *dhan* had been filed in court, and rejected in the suit No. 288 instituted by him against the plaintiff, for the amount of his bond, for which he, the defendant, obtained a decree, which was not appealed from, the plaintiff should be nonsuited under Section 12, Regulation III. 1793. For although the moonsiff in the former case gave the plaintiff permission to sue Abheernath and Chaitun Mhaintee, for the value of the *dhan*, he had said nothing about his suing him.

Chaitun Mhaintee, defendant, denied collecting any *dhan* from the plaintiff, and stated that the receipts granted by him to Abheernath, were for *dhan* on account of the rupees 100 borrowed by him from Rajkishore Dey, and the further sum of rupees 50, which he had advanced to him out of his master's funds. Also that six of the receipts filed by the plaintiff had been forged by him in collusion with Abheernath, who is his ryut.

Abheernath, defendant, pleaded right of exemption from the plaintiff's claim, on the grounds that he delivered the *dhan* to Rajkishore Dey, and made over to the plaintiff his receipts for the same.

The moonsiff, for reasons stated in his decree, was of opinion that the plaintiff had failed to prove his claim, and accordingly dismissed it.

JUDGMENT.

Although from the evidence of the witnesses and the general circumstances of the case, it is inferrible that an arrangement of the nature alleged by the plaintiff, for the payment of the sum of rupees 100, borrowed by him in the month of Assin 1250, was subsequently entered into between himself and Rajkishore Dey; there is no direct or trustworthy proof of the fact. And as it appears from the copy of the decision in case No. 288, instituted by Rajkishore Dey against Sistidhur Rai, (the former being the defendant, and the latter the plaintiff in the present suit,) for the recovery of the amount of the bond executed by Sistidhur Rai, in Assin 1250, it was distinctly stipulated that all payments made in liquidation were to be recorded on the back of the bond, and no allusion whatever was made to the amount being repaid in *dhan*; whether the payments were made in kind or money, it was requisite they should have been recorded on the back of the bond, or the plaintiff should have caused Rajkishore Dey to execute a fresh writing, detailing the altered conditions of the loan. And as the plaintiff asserts that the *dhan*, for the value of which he now sues, was paid in liquidation of that debt, and the different deliveries were not recorded on

the back of the bond, his claim is, in my opinion, untenable. Moreover, I agree with the moonsiff that the delivery of the *dhan* on the part of the plaintiff is not established; for notwithstanding certain witnesses have deposed that they were requested to arbitrate a dispute between the plaintiff and Rajkishore Dey, and their respective agents, Abheernath and Chaitun Mhaintee, regarding the delivery and receipt of some *dhan*, they stated that no adjustment took place; and Chaitun Mhaintee, on the part of Rajkishore Dey, entirely repudiates the receipt for the 77 pouttees of *dhan* filed by the plaintiff, and states that the receipts for the other 45 pouttees of *dhan* were granted by him to Abheernath, for *dhan* delivered on his own account; and not only do the documents themselves purport such to be the case, but the plaintiff has adduced no trustworthy evidence to prove that they relate to *dhan* delivered by him. I therefore see no reason to interfere with the decision of the lower court, which is hereby affirmed, and the appeal dismissed, without serving notice on the respondent.

THE 14TH JUNE 1850.

No. 9 of 1850.

Appeal from the decision of Tarakaunth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated the 25th March 1850.

Chaitunchurn Deer Mahapatur, Kooshal Singh, and Kirpasindhoo Bearah Mahapatur, for himself and minor son, Chowdry Dyтары Bearah Mahapatur, (Defendants,) Appellants,

versus

Chowdry Soodersun Mahapatur, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff for delivery to him of the sum of rupees 1800, the surplus proceeds of the sale of an 8 annas share of talook Nahorpore, pergunnah Oolas, which was sold on account of arrears of Government revenue, he having purchased an 8 annas share of the said property from Kirpasindhoo Bearah Mahapatur, and Musst. Jussoodah Dey, the father and mother of Dyтары Bearah Mahapatur, for the sum of rupees 1650, under a kuballa, dated 23rd Aughun 1254 U., corresponding with the 5th December 1846, which was duly registered,—the revenue authorities having rejected his application to have his name registered as the proprietor in lieu of that of Dyтары Bearah Mahapatur, in consequence of the canoongoe's having reported that he was not in possession.

Chaitunchurn Deer Mahapatur, Kooshal Singh, and Gopeenath Mhaintee were made defendants under a supplementary plaint, in consequence of their having attached portions of the proceeds of the sale in execution of decrees held by them against Kirpasindhoo Bearah Mahapatur.

Kirpasindhoo Bearah Mahapatur, as well as the decreeholders, the other defendants, generally denied the sale of the 8 annas of talook Nahorpore to the plaintiff, and urged that as Kirpasindhoo Bearah was confined in jail at the requisition of the collector, at the time the kuballa is said to have been executed, he could not have executed it without application being first made to the magistrate to allow him to execute it, whereas no such application had been made.

The principal sudder ameen held that it was proved beyond doubt by the evidence of five witnesses named by the plaintiff, that Kirpasindhoo Bearah and Musst. Jussoodah Dey had attested the kuballa and received the sum of rupees 1650, the purchase money therein mentioned. And although Kirpasindhoo Bearah was confined in jail at the time the kuballa was executed, he was daily in attendance at the collector's cutcherry for the purpose of making over his accounts, and it was there that the kuballa had been proved to have been written; and notwithstanding Arut Bearah and Dam Das, two of the witnesses to the kuballa, denied all knowledge of the document, their evidence was not to be credited, as they were ryuts of Chaitunchurn Deer. And as the defendants had filed no proof of their claim, except two perwannahs directing the commitment and release of Kirpasindhoo Bearah to and from jail, and the two before named witnesses were adduced by Kirpasindhoo Bearah on the 15th December 1849, after having stated on the 1st November that he would rest his defence on the proofs adduced by the other defendants; he decreed the sum of rupees 1335-10-1, the amount in the collectorate, which had been attached by order of the court, in favor of the plaintiff, and directed the defendants generally to pay his costs, with interest to the date of payment.

The appellants aver that the plaintiff's claim is not proved as stated by the principal sudder ameen, and in other respects urge the same pleas as before the lower court, regarding Kirpasindhoo Bearah's having been confined in jail at the time he is alleged to have executed the kuballa, and refer also to the depositions of Arut Bearah and Dam Das. They likewise object that the mooktear-namahs presented on behalf of Kirpasindhoo Bearah and Jussoodah Dey at the time the kuballa was registered, were attested by parties in the power of the plaintiff, and were dated nearly two months prior to the registry. Therefore the only point to be ascertained is simply whether the plaintiff's claim is proved or not.

JUDGMENT.

After referring to the records of the case I find that all the four witnesses to the kuballa, who were present when it was written at Cuttack, as well as the individual who wrote it, deposed to its having been executed by Kirpasindhoo Bearah at the collector's cutcherry, where his attendance was caused daily during his confinement in jail, for the purpose of making over his accounts. And Dusscrut Putnaik Canoongoe, in whose charge the kuballa, as well

as the purchase money was placed until the kuballa was signed by Jussoodah Dey, likewise deposed that Jussoodah Dey attested the document in his presence, and that he delivered to her the purchase money, *minus* rupees 200, previously paid to Deenbundoo Bearah, the bother of Kirpasindhoo. I consequently concur with the principal sudder ameen in considering the denial of all knowledge of the kuballa on the part of Arut Bearah and Damoo Das, who were merely witnesses to its attestation by Jussoodah Dey, (who has omitted altogether to defend the suit,) unworthy of credit; and more especially so, because the said witnesses were brought forward by Kirpasindhoo Bearah after he had stated that he had no proofs or evidence to adduce in support of his defence, and that he was content to rest his denial of the sale on such documents as might be brought forward by the other defendants, who had nothing whatever to do with the sale or purchase, but who had merely caused the proceeds of the sale held in realization of the Government revenue to be attached in execution of their respective decrees; and with regard to the exception now taken by the appellants to the mook-tearnamahs under which the kuballa was registered, it is only necessary to remark that no objection was raised against them before the lower court. I therefore consider the whole of the appellants' objections to be unfounded and inadmissible, and dismiss the appeal, and confirm the decision of the principal sudder ameen, without serving notice on the respondent.

THE 18TH JUNE 1850.

No. 25 of 1850.

Appeal from the decision of Moonshee Gureeboollah, Moonsiff of Balasore, dated 15th February 1850.

Koosalce Chowdry, (Defendant,) Appellant,

versus

Gobind Mohun Taldee, (Plaintiff,) Respondent.

THIS suit was instituted to recover the sum of rupees 26, the value of various descriptions of cloth, purchased by the defendant as per the plaintiff's *katta bhuee*, on the 6th and 16th Srabun 1245, and rupees 26, interest thereon for eleven years and twelve days.

The defendant denied the claim, and argued that if he had purchased the cloth the plaintiff would not have so long delayed to enforce payment: he also remarked that the circumstance of the plaintiff's having first quoted the amount in Company's rupees and afterwards converted it into Sicca rupees, cast suspicion on his claim; and that the plaintiff was not of age at the time the cloth is alleged to have been sold by him, and that his father, Nain Taldee, at that time kept the shop.

The moonsiff held that the plaintiff's claim was fully proved by the *katta bluee*, and the evidence of three witnesses; and that the amount in Company's rupees claimed by the plaintiff was correct, though he had, in addition, quoted its corresponding value in Sicca rupees; and as the defendant had adduced no evidence to prove that the plaintiff was a minor, or that his father transacted business in 1245 U., he decreed the principal, viz., rupees 26, in favor of the plaintiff, together with his costs, but disallowed his claim for interest, as he held no writing of the defendant's engaging to pay the same.

In appeal, the defendant set up the same pleas as before the lower court.

JUDGMENT.

Since after calling for, and inspecting the original *katta blueers* for 1245 and 1246, I see no reason for distrusting their genuineness, and they present every appearance of having been written at the period represented; and, in the former, the items on account of which the plaintiff sues are distinctly recorded in the name of the defendant, without any confusion or irregularity regarding the conversion of Company's rupees into Sicca rupees, the account having been kept in Siccas, and afterwards converted into Company's rupees; the fact of the plaintiff's having first quoted the amount in Siccas and afterwards in Company's rupees in his petition of plaint, is of no consequence whatever. And as the plaintiff's claim was preferred within the time allowed by law, and has been proved by three witnesses, I see no reason for disturbing the decision of the moonsiff, which is hereby affirmed, and the appeal dismissed, with costs.

THE 18TH JUNE 1850.

No. 20 of 1850.

Appeal from the decision of Mahomed Arshud, Moonsiff of Kendraparah, dated 30th January 1850.

Juggoo Purrera and Kartikh Purrera, (Defendants,) Appellants,
versus

Bhujnanund Das, (Plaintiff,) Respondent.

CLAIM, rupees 50, principal, and rupees 8-2-7, interest on a tumusook, dated 21st Phalgun 1255 U.

The plaintiff stated that the appellants and their two brothers, Sreedhur Purrera and Rughoo Purrera, who were also defendants in the original suit, conjointly borrowed from him the sum of rupees 50, on the date stated, and executed the bond, promising to repay the same in two months.

The defendants all denied borrowing the money, and stated that they were all in Calcutta, where they were in service at the time the bond is alleged to have been executed by them; and their masters as well as their neighbours would prove that such was the case.

The moonsiff, as far as is ascertainable from his *fysillah*, which is not very intelligibly drawn up, on the grounds that three witnesses on the part of the plaintiff had deposed to the execution of the bond, and that the defendants had filed no proof that they were in Calcutta, with the exception of an English letter accompanied by a translation in the vernacular, in which a person of the name of Seessee Purrea (in the original "Shrew Puradha") was alluded to, but in which there was no mention of any of the defendants, decreed the plaintiff's claim.

JUDGMENT.

It is clearly established by the evidence of three witnesses examined before this court, that all four defendants gain their livelihood as bearers in Calcutta, and this circumstance alone affords strong presumptive grounds for concluding that they could not all have been at their homes at the same time, and have conjointly executed the *tumusook* under which the plaintiff has sued them; but the fact of their not having done so, is, in my opinion, satisfactorily proved by the evidence of Baboo Ram Gopal Ghose, taken at the requisition of this court before the commissioner of the court of requests, who deposed that Sreedhur *alias* Sree Purrera, was in his service, and was in regular attendance on him as sirdar bearer from the 24th September 1846 to the 18th October 1848, both inclusive. It, moreover, appears that although the plaintiff represented in his petition of plaint that the bond was executed on the 21st of Phalgun 1255, that subsequently filed by him is dated the 1st of Phalgun. It is therefore ordered, that the appeal be decreed, and that the decision of the moonsiff be reversed. The appellants' costs in both courts will be paid by the respondent, with interest to the date of payment.

THE 20TH JUNE 1850.

No. 31 of 1850.

Appeal from the decision of Moonshee Gureeboollah, Moonsiff of Balasore, dated 6th April 1850.

Juggoo Dass, (Plaintiff,) Appellant,

versus

Chaitun Barick, Bhunj Barick, and Musst. Mooktee Bewa, (Defendants,) Respondents.

CLAIM, rupees 26-13-12, principal and interest of a *rahn tumusook*, dated the 13th Kartikh 1254 Umlee.

The plaintiff stated that on the abovementioned date Musst. Roopo borrowed from him the sum of rupees 21, and executed the bond, pledging her house as security for its re-payment; and as she died without paying the debt, and the defendants, representing themselves to be her heirs, laid claim to her house as well as her other goods and chattels, which the magistrate attached as *lawaris* and forwarded to the court, he had in consequence sued them for the amount of the bond with interest.

Chaitun Barick admitted that his sister, Musst. Roopo Bewa, borrowed the sum of rupees 21, and pledged her house to the plaintiff; but stated that as he had filed no *mozahim* either before the police or the magistrate, the plaintiff's claim against him was untenable.

Bhunj Barick stated that he and Musst. Mooktee Bewa had claimed the property of their deceased connexion, Musst. Roopo Bewa; but they did not obtain possession of it, and that it was under attachment by the civil court. He also denied that Musst. Roopo was indebted to the plaintiff, and stated that he had forged the bond in order to get possession of her *ghurbarree* land which adjoined his own.

Musst. Mooktee did not enter appearance.

The moonsiff held that the execution of the bond on the part of Musst. Roopo had not been established, for whereas there were five signatures attached to it, the plaintiff stated one had died, another had colluded with the defendants, and a third he was unable to point out to the *peadah*; and although the other two, Purikhyet Dutt and Nitye Chund, gave evidence in favor of the plaintiff, they were ignorant people who could neither write their names nor identify the bond; and though they stated that their names as well as that of Kishen Das were written by Ram Das, the person who wrote the bond, it was manifest, from an inspection of the document, that the names of Nitye Chund and Kishen Das were written by one person, and that of Purikhyet Dutt by another; and for these and other reasons detailed in his decision, he mistrusted the justness of the plaintiff's claim, and dismissed it accordingly.

The plaintiff, in appeal, complains that the moonsiff had dismissed his claim, notwithstanding the execution of the bond had been proved by the evidence of two witnesses; and otherwise questions the inferences drawn by him regarding the general circumstances of the case. It is therefore necessary to enquire whether the appellant's statement, or the view taken by the moonsiff of the case, is correct.

JUDGMENT.

Since suspicion attaches to the evidence of Purikhyet Dutt, one of the two witnesses who have deposed to the execution of the *tumussook* on the part of Musst. Roopo Bewa, in consequence of his name having evidently been written either by a different person from the one who wrote the document and the names of Nitye

Chund and Kishen Das, or has been added subsequently to the date of the bond, (the pen and ink used in writing being at all events different;) and the plaintiff failed to cause the attendance either of the writer of the bond, or of Nurhurry Naik, in whose presence, it is asserted, it was written, and whose name it bears; I do not consider the evidence of the said Purikhyet Dutt and Nitye Chund, who are both ignorant people and unable either to write their names or identify the bond, sufficient to prove the plaintiff's claim. And I consequently see no reason to interfere with the moonsiff's decision, which is hereby affirmed, and the appeal dismissed, without serving notice on the respondents.

ZILLAH DACCA.

PRESENT: C. TOTTENHAM, ESQ., OFFICIATING JUDGE.

THE 6TH JUNE 1850.

No. 290 of 1848.

*Appeal from the decision of Kaleekinker Sein, late Moonsiff of Narain-
gunge.*

Radhakaunt Bose, (Plaintiff,) Appellant,

versus

Bungo Chunder Sha, (Defendant,) Respondent.

*Vakeels of Appellants—Moulvee Ameeroodeen and Moonshee Gholam
Abas.*

Vakeel of Respondent—Hurry Kishore Roy.

SUIT to recover the price of bricks, &c., supplied to defendant, rupees 78-1, with interest.

This suit was first instituted in the court of Moulvee Abdoolah, moonsiff of Dacca, who decreed the whole amount to plaintiff on the 5th November 1846; against which Bungo Chunder defendant appealed; and the judge, by whom the appeal was tried on the 16th August 1848, set aside the moonsiff's decision, and transferred the suit for re-investigation *de novo* to the moonsiff of Narraingunge.

The moonsiff of Narraingunge dismissed the plaintiff's claim for the following reasons:

First.—Plaintiff states that on a settlement of accounts, which took place after eight years in presence of both parties, there appeared a balance of rupees 44-10 due to him by defendant, and produces, in proof of this, an account unsigned by defendant, and 17 slips of paper called rokas (or receipts for the bricks delivered) signed by him; but it is contrary to custom that on a mutual settlement of accounts being made after so long a period, the account should not have received the signature of the defendant, and the rokas should remain in plaintiff's possession.

Second.—According to the Hindoo custom the year is written at the top of every page under the name of the Deity; and the year 1244, which is thus written at the top of the above account, is in different ink and writing, and must therefore have been written subsequently.

Third.—The number of bricks delivered is stated in only 10 of the rokas, and by comparing the other 7 with the account, the

number delivered appears to be 19,400, from which 3750 have been deducted on account of bhata, &c., leaving 15,650. An account of this sort could not have been settled without the agreement of both parties, and if it had been so settled, it would have been signed by the defendant, and the rokas returned to him.

Fourth.—The khata-buhee, containing the account, has the year 1245 at the commencement and on all other pages, except those two which relate to the defendant's account, in which it has evidently been altered to 1244. It cannot therefore be depended upon.

Fifth.—The witnesses produced by the plaintiff are unworthy of belief, because their evidence differs from some of the statements in the plaint, rejoinder, &c. Three of them are men of low caste, who depose to having been together in the boats when an account of the bricks was taken, and declare that they can distinctly remember all the circumstances of the account, viz., time, place, and number of bricks, after a lapse of eight years, which is very improbable. The fourth witness, Nund Laul, said to be the writer of the account, was not named as a witness by the plaintiff in the former suit.

In the appeal to this court, the plaintiff gives no satisfactory answers to the objections raised by the moonsiff to the documentary and oral evidence produced in support of the claim, and has urged nothing new in proof of it. I have examined the khata-buhee and the rokas, and fully concur in the reasons given by the moonsiff for rejecting the evidence and dismissing the claim, and therefore confirm his decision, and dismiss the appeal, with costs against the appellant both in this and the former suit.

THE 10TH JUNE 1850.

No. 29E of 1848.

Appeal against the decision of Moulvee Imdad Allee, Moonsiff of Poragacha.

Kumlakaunt Sein, and Mssamuut Burmomoe, widow of Chunderkaunt Sein, deceased, (Defendants,) Appellants,

versus

Luckheekaunt Paul and Ram Lochun Paul, (Plaintiffs,) Respondents.

Vakeel of Appellants—Hurry Kishore Roy.

Vakeels of Respondent—Ramlochun and Puddumlochun.

The other plaintiff has not appeared.

SUIT for Company's rupees 130-13-4, for value of provisions supplied.

Plaintiff's statement is that he kept a moodhee's shop in a bazar, called Dhumogunge, from which he supplied Kumlakaunt and his father, Kishen Doss, the father-in-law of Burmomoe, with rice, dhall, &c., daily entering it in their names in his books. On 31st Jyete

1240, a balance was struck, when there appeared Sicca rupees 138-10-10 due to plaintiffs, upon which Kishen Doss directed his gomashtha Ramkinker to write the amount in words (mublugbundee) under the balance.

In Phalagoon 1242, Kishen Doss paid 16 rupees in two instalments, which were credited in the account, and he directed his gomashtha Ramkinker to write the balance that then remained, and to sign the account for him, and promised to pay it by degrees within a year; but he died without having paid any part of it, and therefore this action is brought against the defendants, who are his heirs.

Kumlakaunt defendant denies the debt, and says that his father never could have authorized the gomashtha to sign the account for him as he was well able to write for himself, and that he was absent from home when he is said to have done so.

The moonsiff considers the debt proved by the account books and the evidence of the witnesses, and as the defendants have brought no proof of their allegations, he decrees the amount.

The appellant, in his petition to this court, repeats the substance of his answer to the plaint, and adds that the moonsiff did not summon his witnesses or take his proof.

On examining the records of the case, I find that the moonsiff did summon the witnesses named by the defendants, and gave ample time for their appearance, and for the production of defendants' proofs; and as I consider the plaintiff's claim fully established by the account books and evidence of the witnesses, I confirm the moonsiff's decision, and dismiss the appeal, with costs.

THE 12TH JUNE 1850.

No. 223 of 1848.

Appeal from the decision of Kaleekinker Sein, late Moonsiff of Naraingunge,

Ramdyal Surma, (Plaintiff,) Appellant,

versus

Radhamadhub Surma, Bungo Chunder Surma, Muhes Chunder Surma, and Taruck Chunder Surma, (Defendants,) Respondents.

Vakeel of Appellant—Gour Chunder.

Vakeels of Respondents—Bungo Chunder, Muhes Chunder, and Birda Kinker.

The other two Respondents have not appeared.

SUIT for arrears of rent, amounting with interest to rupees 281-3-6-10.

The moonsiff first decreed rupees 16-8 to plaintiff, on the 18th February 1846; which the principal sudder ameen, on appeal, reversed, on the 31st January 1848, and ordered a re-investigation on certain points. The moonsiff then decreed rupees 40-5-2, and

dismissed the remainder of the plaintiff's claim; against which decision the present appeal is brought by the plaintiff.

The plaintiff states that he is part proprietor of a talook called Rāmjeebun Burmkar, kismut Dodally, belonging to the resumed Nowab Jagheer, the jumma of which was formerly Sicca rupees 21-12. The shares of this talook were divided as follows:

- A 4 annas share belonged to Sheeb Chunder Burmkar.
- 4 ditto ditto, Puddumlochun Burmkar.
- 4 ditto ditto, Ramlochun Burmkar.
- 4 ditto ditto, To plaintiff and Kishen Chunder,
in equal proportions.

In 1232, the talook was measured by an ameen, and a jumma-bundee prepared, by which the jumma amounted to Sicca rupees 106, 9 annas, 16 gundahs. A settlement was made in 1242, previous to which Ram Mohun, the proprietor of a 4 annas share, and Kishen Chunder, plaintiff's partner, presented petitions to the Collector, stating that they had sold portions of their shares to the defendants and others, and relinquished all claim to the settlement. The settlement was consequently made with the remaining shareholders, namely, plaintiff, Sheeb Chunder, and Puddumlochun's brother and cousin. The sudder jumma was fixed at Company's rupees 79-8-10, allowing a deduction of 30 per cent. for malikana and expenses from the rental calculated in the jumma-bundee; and the settlement was to continue in force for ten years from 1242 to 1251. The settlement was made collectively with the above persons; but by mutual arrangement, the talook was subsequently divided amongst themselves into three parts, by which the plaintiff got one-third of the share relinquished by Rammohun, and the whole of his co-sharer Kishen Chunder's share, for which he has ever since paid the Government revenue.

The rent of the land belonging to his share in the occupation of the defendants, amounts, according to the jumma-bundee, to Company's rupees 18-8-9-11 krants per annum, of which they have only paid 9 rupees. Arbitrators were appointed to settle the rent; but the defendants did not appear before them, and nothing was done. He therefore sues for the balance of rent (with interest) at the above rate.

The defendants reply that they purchased the land from the former proprietors at a fixed rent amounting to Sicca rupees 5-2-8-1, and that they are entitled to proprietary rights; that the plaintiff has overstated the quantity of land held by them; that after the conclusion of the Government settlement, the other partners made a settlement with them at rupees 7-8 for their shares; and at the same rate the rent of the land in plaintiff's share would amount to rupees 5-4; but plaintiff having been absent from the country at the time the above settlement was made, his mother received the rent for him at that rate up to 1249, and, on the whole, there now remains due only 16 rupees, 8 annas, which they are willing to pay, &c.

The moonsiff, in his first decision, gave a decree for rupees 16-8, disallowing the plaintiff's claim to rent according to the jumma-bundee, and recognizing the defendants' right to malikana or proprietary profits, in consideration of their having purchased their from the former proprietors.

This decision was considered unsatisfactory by the principal sudder ameen, who was of opinion that if the defendants were in possession of the land, they should pay rent for it according to the jumma-bundee: he therefore reversed the decree, and recommended that the case should be sent back to the moonsiff, that he might enquire whether the lands were in defendants' possession, and what was the rent fixed upon them according to the chittahs and jumma-bundee.

The moonsiff, in his decision on the re-hearing of the case, remarks with reference to the points to which his enquiries had been directed by the principal sudder ameen—1st. That both parties agree as to the possession, and it is proved by the witnesses; therefore it is unnecessary to enquire into that point—2nd. That he adheres to his former opinion respecting the rights of the defendants to profits, and therefore he does not consider it proper to assess them according to the jumma-bundee—3rd. With reference to the extent of the land, the plaintiff being unable to point out the defendants' land in the chittahs, he has, with his consent, estimated the quantity partly from the kuballas and partly from plaintiff's own statement. And lastly, with reference to the amount due, he passes over the years up to 1249, for which he considers the rent to have been paid, for the reasons stated in his first decision; he therefore confines his enquiries to the rents for the remaining two years, 1250 and 1251, for which years he fixes the rents at Company's rupees 16-14-4 per annum, from which he deducts 20 per cent, on account of malikana and expenses, leaving rupees 13-8-4 per annum as the net rent due to plaintiff, which for two years amounts to rupees 27-0-8, which, with interest from 1251, amounting together to rupees 40-5-2, he decrees to plaintiff.

To this the appellant objects that the enquiry ordered on the former appeal has not been made; that defendants have no proprietary rights; that the quantity of land has not been fairly estimated; and that, though the moonsiff has fixed the rent of the last two years at rupees 13-8-4 per annum, and the defendants themselves admit having only paid at the rate of rupees 5-4 for the preceding years, he declares the rent to have been fully paid up to 1249,—with other matters which it is unnecessary to repeat.

JUDGMENT.

The moonsiff's decision is manifestly erroneous, and the investigation incomplete; and in all the previous decisions of this case the real questions at issue, namely, the right of the plaintiff to enhance

the rent has been overlooked. The points for consideration are, 1st. Whether the defendants are proprietors, or entitled to hold their lands at fixed rent. If they are, what the amount of that rent is, and to whom payable. 2nd. Whether (if the defendants are not entitled to a fixed rent) the proper steps were taken by the settling officer, or by the plaintiff himself, to enable him legally to enhance the rent. According to the decision of these questions the amount of rent due to plaintiff must be determined, either according to the rent previously paid by defendants, or according to the jumma-bundee.

Both parties admit that the talook belongs to the Nawab Jagheer resumed by Government; that it was measured, and a jumma-bundee prepared in 1832, and settled on the basis of that jumma-bundee in 1242 with plaintiff and two of the original proprietors or their heirs, the other two proprietors having voluntarily relinquished their right to participate in the settlement. The defendants purchased at different times several small parcels of land, to be held at low fixed rents without reference to the quantity of the land, from the two proprietors whose interest in the talook has ceased. The plaintiff and the others who accepted the settlement, entered into engagement for the payment of the Government revenue of the land held by the retired proprietors as well as their own; and by mutual arrangement certain portions of the talook were assigned to each, by which the plaintiff succeeded to the proprietary rights of the greater portion of the land which had belonged to the retired proprietors. The kuballas filed by the defendants make no mention of a transfer of proprietary interests, which were evidently reserved by the venders, as the land was sold subject to rent: they are nearly all dated subsequently to 1232, and therefore after the resumption. No claim for proprietary rights or fixed rents appears to have been made by the defendants at the settlement.

The rights of the proprietors might have been transferred by sale, though they do not appear to have been so in this instance; but the proprietors had no power to confer on their under-tenants, by sale or otherwise, a right to hold lands permanently at a fixed rent below their value, when the Government had acquired the right, by resumption, of assessing those lands at their full value. Moreover, the defendants admit that they entered into engagements with the other proprietors after the settlement at higher rents than they had previously paid;—thereby showing that they neither considered themselves entitled to proprietary rights nor to the right of holding at fixed rates.

I am therefore of opinion that the defendants were liable to be assessed at the same rates as those which were fixed at the settlement upon the lands held by other tenants, and that the plaintiff is fairly entitled to recover at that rate, if the notice required by the law preparatory to an enhancement of rents was duly served on the

defendants. No enquiry has been made on this latter point; nor has it been determined what the rent of the land for which plaintiff sues, was previous to the settlement, or what it became by the jum-mabundee. I therefore reverse the moonsiff's decision, and remand the case for re-investigation with reference to the foregoing remarks. The value of the stamp of the petition of appeal to be refunded, and the other costs provided for in the forthcoming award.

THE 14TH JUNE 1850.

No. 291 of 1848.

Appeal against the decision of Chunderkishore Roy, Acting Moonsiff of Manickgunge.

Juggonath Sha, (Defendant,) Appellant,

versus

Surroopchunder Sha, and Chundermonee, widow of Neemae Sha,
(Plaintiffs,) Respondents.

Vakeels of Appellant—Pudumlochun Ghose and Moulvee Ameerodeen.

Vakeels of Surroop Chunder Sha, Respondent—Rammonee Bose and Juggernath Biswas.

Chundermonee Respondent did not appear.

SUIT for Company's rupees 172-6-5, balance of account for goor, cheenee, &c.

Plaintiffs state that Juggernath defendant came to their gola in Augootcea Bazar, at Manickgunge, introduced Jeebun as his gomashita, and proposed trading with them through his agency, promising to be responsible for him. Accordingly, on the 10th Poos 1240, Jeebun began to purchase cheenee, &c., at their gola, putting Juggernath's name in the account, and at the end of that year there was a balance against him of Sicca rupees 11-10-3-1, which was carried on to the next year's account, and entered in the names of Juggernath and Jeebun. In this manner Jeebun continued to deal with them until the 3rd Bysakh 1243, when the accounts being compared and a balance struck, there appeared Sicca rupees 161-9-16-2 against him; upon which he told plaintiffs to go to Juggernath after 15 days; and he would pay the amount. Accordingly Surroop went with other persons belonging to his gola to Juggernath's house on the 20th Bysakh, where Juggernath and Jeebun having compared the hathchittas with the account book, the former admitted the correctness of the balance against him and promised to pay it within a month. He however has not paid any part of it.

The defendant Juggernath, in reply, declares that he has never traded in goor, cheenee, &c., at all; that he never went to plaintiffs' gola; that Jeebun was not his gomashita; and, in short,

denies every part of plaintiffs' statement, and says that Jeebun through enmity towards him has colluded with the plaintiffs to bring this false claim. The other defendant, Jeebun, did not appear.

The plaintiffs produced their account books for the years in which the transaction took place, and proved, by the evidence of three of their gomashas, that Juggernath came to the gola in 1240 and introduced Jeebun as his gomasha, undertaking to be responsible for his dealings, and subsequently in 1243 admitted the correctness of the account and promised to pay the balance.

In the rejoinder the plaintiffs stated that Juggernath had a gola of his own at Nowabgunge, and that he used to trade in several things. The moonsiff therefore appointed an ameen to enquire into this, and directed the defendant Juggernath to give proof of the cause of the other defendant Jeebun's alleged enmity towards him.

The ameen ascertained that Juggernath had a gola at Nawabgunge which was closed eight or nine years ago; that Jeebun had been his gomasha, and that he had traded in goor, cheenee, &c., at Manickgunge and other places. Juggernath brought no proof of his counter-statements. The moonsiff therefore considered the claim proved, and decreed it accordingly.

In appealing to this court the defendant Juggernath repeats his denial of all knowledge of the transaction, and dwells particularly on the fact of the plaintiffs not having produced any thing bearing his signature, to show his connection with Jeebun and acknowledgment of the debt, though he is said to have introduced him personally, and to have personally examined and admitted the correctness of the account. Jeebun did not appeal.

JUDGMENT.

This case is very similar to the case of Gour Chunder *versus* Hoolassee, decided by the Sudder Dewanny Adawlut on the 27th April 1848, in which the principle is laid down that "the principals in a trading concern are bound by the acts of their agents, though no written authority had been granted by the former formally accrediting the latter to the parties with whom they traded, in consequence of strong evidence connecting the principals and agents;" and in this case the plaintiffs' claim is supported by his account books for several years, in which the account is carried on in the defendants' names from year to year with perfect regularity and apparent correctness, and all the statements made by plaintiffs respecting Juggernath's share in the transaction are supported by the evidence of their gomashas; while, on the other hand, the defendant (appellant) has brought no proof whatever of his counter-statements, and the enquiry made by the ameen proves that some of his assertions are untrue. I therefore consider the appellant liable for the amount of plaintiff's claim, and accordingly confirm the moonsiff's decision, and dismiss the appeal, with costs.

THE 14TH JUNE 1850.

No. 299 of 1848.

Appeal from the decision of Kalee Kinker Sein, late Moonsiff of Naraingunge.

Mussamut Ruttun Malla Debea and Kasseepreeah Debea, widows of Kantnauth Banoorjea, deceased, (Defendants,) Appellants,

versus

Rajceblochun Sein, (Plaintiff,) Respondent.

There were several other Defendants who have not appealed.

Vakeel of Appellants—Gour Chunder Doss.

Respondent has not appeared.

SUIT to recover possession of 6 gundahs of land, valued at rupees 12.

Plaintiff states that the father of Gooroopershad, one of the defendants, possessed a piece of land in talook Ellahibux, pergunnah Bickrampore, which he had obtained in an exchange for other lands, and in 1248 he gave plaintiff an hereditary pottah for 6 gundahs of it at 4 annas rent, according to which he had possession until 1253, when the talook Ellahibux having been sold by auction, and purchased by Brijomohun Roy, deceased, and others, they gave a pottah for the land in plaintiff's possession to other persons, and returned him out.

Ruttun Mallah Debea and the other defendants, who purchased the talook, deny having ousted plaintiff, and state that neither he nor Gooroopershad's father ever had possession of any part of talook Ellahibux. Gooroopershad Sein states that his father obtained a piece of land in talook Ellahibux from Nusseerooddeen Chowdry, in exchange for an equal quantity of land in another talook, and that he gave plaintiff a pottah for a part of it as related by him.

The moonsiff gave a decree in this case, on the ground that he had previously decided the point at issue in another case, in which an action was brought by Gopeenath Doss, against the same defendants, for another piece of the land in the same talook, obtained by Gooroopershad's father in exchange, in which he had given the plaintiff a decree.

The decree upon which the moonsiff grounds his decision in this case, was however reversed in appeal by the principal sudder ameen, who directed the plaintiff to be nonsuited, on the ground that he had omitted to mention in the plaint any particulars of the land said to have been given in exchange by Gooroopershad's father, or to offer any proof of that transaction upon which his title mainly depended; and as this case is exactly similar, the plaintiff in it must be nonsuited also.

The appeal is therefore decreed with costs, and the plaintiff nonsuited, and the moonsiff's decision reversed.

ZILLAH DINAGEPORE.

PRESENT: JAMES GRANT, ESQ., JUDGE.

THE 20TH JUNE 1850.

No. 15 of 1849.

Appeal from the decision of Moulvee Gholam Asghur, Principal Sudder Ameen of Dinagepore, dated the 23rd May 1849.

Gungapershad Das and Gorachand Das, (Defendants,) Appellants,
versus

Serajooddeen and Ryazooddeen, (Plaintiffs,) and Aga Kassim Ally,
guardian of Kumranissa Begum and Khyranissa Begum,
zemindars, (Defendants,) Respondents.

CLAIM, reversal of the order of the collector of Dinagepore, dated the 11th January 1847, giving possession of tope Mohindergong Rawot Nuggur to the defendants as farmers from 1253 to 1269, at a jumma of rupees 2425, under an unilnamah, signed and sealed by Aga Kassim Ally, dated the 6th Chyte 1252. The defendants (as plaintiffs in the collector's court) stated that they were in possession from the commencement of 1253 until the month of Assar, when they were ousted by the plaintiffs. It appears from the collector's decision that Aga Kassim Ally allowed that he had given the unilnamah, but pleaded that it had not been signed or sealed by the other sharer, "Khyranissa Begum," and that no kubooleut or security had been given or money paid. The collector held that possession had been given, that no objection had been made by the other partners, and that the zemindars had a right to demand a kubooleut, security, &c., but not to oust the farmer. The plaintiffs state that, on the 23rd of Jyte 1253, they gave a kubooleut and security, and obtained a pottah for the farm of Mohindergong and another estate, and pray that the collector's order giving possession of Mohindergong to Gungapershad Das and Gorachand Das, as farmers, may be reversed.

Aga Kassim Ally (defendant) states that Gungapershad and Gorachand had Mohindergong in farm up to the end of 1252, and wished to take it from 1253 to 1269; that he at their request gave them an "unilnamah," to enable them to make arrangements for the cultivation of the estate; but that in consequence of the sharer,

Khyranissa Begum, objecting to their having the farm he gave it to the plaintiffs.

Khyranissa's answer is to the same purport.

The defendants; Gorachand and Gungapershad, state that they twice before had the farm; that an umilnamah signed by Aga Kassim Ally was the only document given on each occasion, and that the plea of the want of Khyranissa Begum's signature is humbug.

The principal sudder ameen decreed the case, on the ground that the plaintiffs' pottah must be held good against the "umilnamah," on the strength of which the collector's order was passed, the former being perfect in respect to the signatures or seals of both the sharers, &c., and the other quite the contrary, and because the collector had no jurisdiction in the case, it being one of dispute between two farmers.

I do not think it necessary to enter into any detail, as it is clear that Gungapershad and Gorachand did not obtain a pottah, and did not give either kubooleut or security. The "umilnamah" was merely an intimation to the ryots that the zemindar had agreed to the terms of the would-be-farmer, who was afterwards to have a "pottah" according to custom, *i. e.*, on his furnishing security and giving a kubooleut, and was evidently given less for the benefit of the zemindar than for the accommodation of the other party. The plaintiffs are entitled to possession under their "pottah," whatever may have been the cause of the other party failing to obtain one. I therefore dismiss the appeal, with costs.

THE 20TH JUNE 1850.

No. 16 of 1849.

Appeal from the decision of Moulvee Gholam Asghur, Principal Sudder Ameen of Dinagepore, dated the 23rd of May 1849.

Kassim Ally, guardian of Kumranissa Begum, (Defendant,) Appellant,

versus

Gungapershad Das and Gorachand Das, (Defendants,) and Scrajooddeen and Ryazooddeen, (Plaintiffs,) Respondents.

THIS appeal is against the principal sudder ameen's order in case No. 15 of 1849, in respect to the appellant's costs, with which he taxed the appellant as the causer of all the misunderstanding in having first given an "umilnamah" to one party and subsequently a "pottah" to another.

The appellant claims remission from the payment of the plaintiffs' costs and reimbursement of his costs by the defendants, Gungapershad and Gorachand Das, as he was not responsible for their quarrels.

I do not see why any mulct should be imposed on the appellant. On the 6th of Chyte 1252 he gave an "umilnamah" to the farmers, who wished for a renewal of their lease apparently as an accommodation and probably because they were not then prepared with security. On the 23rd of Jyte (upwards of two months after) he gave the farm to another party, and the inference is that the late farmers had up to that time failed in furnishing security. It is also possible enough that the appellants' assertion that his partner objected to the renewal of the lease may be true. I consider the appellant and plaintiffs entitled to their costs from the defendants, Gungapershad Das and Gorachand Das, and amend the principal sudder ameen's decision accordingly, and decree the appeal, with costs.

THE 20TH JUNE 1850.

No. 21 of 1849.

Appeal from the decision of Moulvee Gholam Asghur, Principal Sudder Ameen of Dinagepore, dated the 23rd of May 1849.

Khyranissa Begum, (Defendant,) Appellant,

versus

Gungapershad Das and Gorachand Das, (Defendants,) and Serajooddeen and Ryazooddeen, (Plaintiffs,) Respondents.

THIS appeal is also against the principal sudder ameen's order in case No. 15 of 1849, in respect to the appellant's costs with which she was taxed. I consider the appellant entitled to her costs from the defendants, Gungapershad Das and Gorachand Das, whose groundless claim in the collector's court to the farm of the estate led to her being included among the defendants in this case, though she is in no way concerned in the plaintiffs being ousted from the farm which she had granted them.

I accordingly amend the principal sudder ameen's decision to that extent, and decree the appeal, with costs.

THE 27TH JUNE 1850.

No. 56 of 1848.

Appeal from the decision of Abdool Mujeed, Moonsiff of Beergunge, dated the 11th of February 1848.

Teekaram Dass, (Defendant,) Appellant,

versus

Bhamin Dass and others, (Plaintiffs,) Respondents.

CLAIM, rupees 288-10-5, rent due from 1246 to 1251, with interest.

The defendant pleads that he only held the land for which rent is claimed for three years, 1247 to 1249, that he paid the rent in

full as per receipts, gave up the land in the end of 1249, and intimated his having done so in a petition to the collector, that he paid the rent of a jote in his brother Kanpooram's name for 1246, to the former zemindar, and rupees 129, on account of it, from 1247 to 1249, to the plaintiffs, that in 1250 he took another jote (Ramkissen) and paid on account of it and the former one (Kanooram's) rupees 117 to the plaintiffs, in that and the following year, leaving a balance of Company's rupees 13-10 due.

The moonsiff decreed rupees 226-15-7½, taking the jumma of 1246 at rupees 40 according to a former decree, and reckoning a quarter of it due to the plaintiffs, and the jumma from 1247 to 1249 at rupees 72-3-5, according to a kubooleut, and that of 1250 and 1251 at rupees 98-8-11-3, according to a notice said to have been served on the defendant. The moonsiff held that the defendant had only one jote, (as stated in the plaintiffs' reply,) disallowed his receipts for the rent of the three jotes, and considered that his having given up the jote on account of which the plaintiff sued was not proved by the copy of his petition to the collector and the evidence of one witness.

The appellant states that in execution of this decree 421 rupees' worth of his property was attached, and it appears from the record that it sold for rupees 104, including the land held by him, which, though valued in the list furnished by the plaintiffs at rupees 121, only brought rupees 3 in the moonsiff's cutcherry. The plaintiffs purchased the estate on the 23rd Phalgun 1246, or very nearly the end of the year, yet sued for the rent of the whole year at a jumma of rupees 96-7-3-1, said to have been ascertained from the former zemindar's papers, though the moonsiff was satisfied from the copy of a summary decree against the defendant that his jumma was only Sicca rupees 40. The defendant's petition to the collector touching his having in the end of 1249 given up the land for which he had given a kubooleut for three years (1247 to 1249,) supported by the evidence of one witness and the circumstance mentioned below, I see no reason to doubt; and the notice said to have been served upon the defendant for the subsequent years I consider fictitious. The following is an abstract of the respective assertions as to demands and payments.

Jumma and payments according to plaintiffs.

1246, Rupees 96-7-3-1. Rupees 42 as per former putwaree's papers.
 1247 to } Rupees 216-9-15. Rupees 216-9-15, as per kubooleut,
 1249, } (Rupees 72-3-5,) &c.
 1250 to } Rupees 197-1-3-2. Rupees 19-1-3-2, as per notice under
 1251, } Regulation V. 1812, &c.

Jumma and payments according to defendant.

1246, Rupees 45. Rupees 45 paid to former zemindar for jote, Sicca Rupees 40.

1247 to } Rupees 216-9-15. Rupees 216-9-15 as per receipts, or
 1249, } memo. of accounts filed.

Do. to Do. 135. Rupees 129, as per receipts filed.

1250 to } Rupees 1,328. Rupees 117, as per receipts filed,
 1251, }

The defendant asserts that the three years' kubooleut (1247 to 1249,) for 96 beegahs 16½ cottahs, jumma rupees 72-3-5, was for waste land, exclusive of the jote in Kanooram's name, jumma rupees 45, which he held all the six years, and the one in "Ram Kissen's" name, jumma rupees 21-4, which he held in 1250 and 1251.

In support of the payment of the kubooleut jumma (from 1247 to 1249,) he has filed a memo. for each year, in which he is credited with 30 rupees pay as dâk mohurer, an appointment not denied by the plaintiff, the balance being cash payment. In support of the payments on account of the separate jotes (Kanooram's and Ram Kissen's) he has filed receipts in which the said jotes are specified. The plaintiff asserts that the defendant held only the land specified in the kubooleut and notice, and deny the authenticity of the receipts on account of the separate jotes, though they give him credit for payments to a much larger amount. The plaintiff managed to get the defendant's property sold in execution of the decree apparently much under its value, especially his land, which brought only 3 rupees in the moonsiff's cutcherry, where it was up at the request of the plaintiff, on the ground that the sum bid for it in the mofussil was much under its value, and though it was advertised according to the kubooleut, or rather the notice jumma, yet it is very clear from the detail that the Kanooram and Ram Kissen jotes were disposed of, and the fictitious advertisement accounts for there being no bidders except the creatures of the plaintiff. The defendant also states that when seized in execution of the decree he was bringing 200 rupees to deposit in court, and was plundered by the people of the plaintiff, who subsequently made away with a large quantity of his property while he was in jail. I cannot in this case assist the defendant in respect to the sacrifice of his property or plunder of his property, which I believe in, though not exactly to, the extent he asserts, but I am perfectly satisfied from the documents, evidence, and circumstances abovementioned, that the moonsiff's decision should be reversed, and I therefore decree the appeal, with costs.

THE 28TH JUNE 1850.

No. 11 of 1848.

Appeal from the decision of Moulvee Golam Asghur, Principal Sudder Ameen of Dinagepore, dated the 9th of June 1848.

Kishen Koomar Nundy and Mahaburut Nundy, (Plaintiffs,
Appellants,

versus

Anund Chunder Chowdry, guardian of Kalikoomar Banerjea,
(Defendant,) Respondent.

CLAIM, rupees 978-2, due on a bond for rupees 1000, dated the 24th Assin 1251.

The defendant denies the authenticity of the bond, and urges sundry circumstances against the probability of the money having been borrowed as asserted by Mooktakassy, the aunt of Kalikoomar.

The principal sudder ameen dismissed the case, on the grounds that the sum said to have been borrowed was large with reference to the circumstances of the borrower; that the asserted payment (125 rupees) before any thing was due by the terms of the bond was small and unusual; that the witnesses were not of the respectable class to be looked for in such a document; that Nuffur Chund (formerly a servant of the borrower,) in whose name a deed of gift had been produced before, and disallowed by the collector, now as a defendant denied it; and that the money said to have been borrowed and paid was not entered in the accounts of Mooktakassy, which were kept by the said Nuffur Chund. It appears that on the death of Mooktakassy, Rasmony, her sister-in-law and mother of Kalikoomar, applied to the collector to have her name entered as Mooktakassy's heir, and that Nuffur Chund claimed her estate under a deed of gift, which was disallowed by the collector on the 1st of Assin 1252. On the 4th of that month this case was instituted against Rasmony as the recorded heir of Mooktakassy, and Nuffur Chund as he was in possession of the estate to which the plaintiffs looked for their money. Mooktakassy, who went on a pilgrimage to the west in Maugh and died in Chyte 1251, is said to have borrowed the 1000 rupees on the 24th Assin and to have paid back 125 rupees on the 29th of Poos of that year though not due until Sawun 1252. Such payment, a month before starting on a pilgrimage and some six months before it was due, is most improbable, and the omission in the plaint of any mention of the person through whom the money was obtained for Mooktakassy, or the place in which it was paid, added to the grounds for dismissal detailed by the principal sudder ameen, satisfy me that the claim is fictitious. I therefore dismiss the appeal, with costs.

THE 28TH JUNE. 1850.

No. 18 of 1849.

Appeal from the decision of Moulvee Gholam Asghur, Principal Sudder Ameen of Dinagpore, dated the 26th of May 1849.

Nundaram Pertaub Mul, (Defendant,) Appellant,

versus

Setabchund, (Plaintiff,) Respondent.

CLAIM, rupees 522-8, due on account of a hoondie for 500 rupees, dated the 3rd Kartikh 1254, drawn by the appellant on Torul Mul Golabchund, who accepted it, but did not pay, and have not filed any answer in this case.

The appellants allow that they gave the hoondie and received the money, but plead that the hoondie, which was payable within 15 days, having been accepted, and the plaintiff, not having informed them for four months of the non-payment, cannot recover the amount from them.

The principal sudder ameen decreed the case, with a proviso that the amount was to be recovered from Torul Mul Golabchund, and failing that from the appellants.

I think the principal sudder ameen's decision a very proper one, and therefore dismiss the appeal, with costs.

THE 29TH JUNE 1850.

No. 19 of 1850.

Appeal from the decision of Manickchund Shome, Additional Moonsiff of Rajarampore, &c., dated the 15th of December 1849.

Durpanarain Dass, (Defendant,) Appellant,

versus

Maharaj Tarakaunth Rai, (Plaintiff,) Respondent.

CLAIM, rupees 145-10-9, due for two instalments of a kistbundee for rupees 169-13-1, dated the 13th Assin 1255. The case was decreed *ex parte*, and the appellant now pleads that he went on a pilgrimage before the case was instituted, and that it was decided before his return. It is not usual to go to Gya on a pilgrimage in July (13th Sawun) nor to be some five months in getting back again.

The plaintiff states that the kistbundee was given for the balance due by the defendant's son as putwarree, and the defendant, as his surety, after the son's death. The defendant denies having given the kistbundee, and enters into a long detail, making out that the balance due by his son was something under rupees 20, without any allusion to his having been or not having been surety for his son. Under such circumstances, I see no ground for supposing that the kistbundee is a forgery, or for admitting the

pilgrimage plea. I therefore confirm the additional moonsiff's decision, and dismiss the appeal.

THE 29TH JUNE 1850.

No. 173 of 1848.

Appeal from the decision of Khadim Hossein, Moonsiff of Putneetullah, dated the 13th of June 1848.

Deanutoollah Chowdhry, (Plaintiff,) Appellant,

versus

Onoopoorna Debya, (Defendant,) Respondent.

CLAIM, rupees 276-3-10, due on a kistbundee for rupees 291, dated the 4th Bhadoon 1242.

Defendant denies the authenticity of the kistbundee, and urges that her husband, who is said to have paid 169 rupees principal, with 40 rupees interest in 1247, died in 1246, also that the plaintiff's servants failing to pay rent for some of her burmooter land she obtained it by complaining to another zemindar, and that the object of this suit is to deprive her unjustly of her land.

The moonsiff dismissed the case, on the grounds of discrepancies in the evidence, the suspicious appearance of the plaintiff's document, and an overcharge in interest. The witnesses to the kistbundee know nothing of the asserted payment in 1247, which is not proved and apparently merely asserted to evade the law of limitation.

I see no reason for interfering with the moonsiff's decision, and therefore dismiss the appeal, with costs.

ZILLAH HOOGHLY.

PRESENT: F. W. RUSSELL, Esq., JUDGE.

THE 10TH JUNE 1850.

Case No. 105 of 1850.

Appeal from the decision of Baboo Nobinchunder Mitter, Moonsiff of Rajapore, dated the 18th day of March 1850.

Gooroodass Paul, (Plaintiff,) Appellant,

versus

Takooranee Dasse and Jodoonath Sein, (Defendants,) Respondents.

CLAIM, for the recovery of rupees thirty-two, being the amount of a sum of money advanced on loan on a bond including interest.

It appears that the appellant preferred this appeal on the 29th day of April 1850, stating he would subsequently file his detailed grounds, and reasons for appealing: he has failed to do so, that is to say, he has failed to file his detailed grounds of appeal for a period of more than six weeks: therefore I dismiss this appeal, with costs, under the provisions of Act XXIX. 1841.

THE 10TH JUNE 1850.

Case No. 295 of 1848.

Appeal from the decision of Pundit Sreeram Turkolunkar, head Moonsiff of Hooghly, dated the 29th day of July 1848.

Sheikh Ghasee, (Defendant,) Appellant,

versus

Sheikh Kureembuksh, (Plaintiff,) Respondent.

CLAIM, for the recovery of the sum of rupees fifteen, annas five, gundahs seventeen, being the amount of cash advanced on loan on a bond including interest.

It appears from the papers of this case that, on the 5th day of April 1850, the vakeel for the appellant intimated the death of his client, in consequence of which the usual proclamation was issued for the appearance and attendance of the heirs of the deceased, however: no person has appeared before this court as the heir up to this day, in consequence I order this appeal to be struck off the file.

THE 10TH JUNE 1850.

Case No. 304 of 1848.

Appeal from the decision of Baboo Taruckchunder Ghose, Moonsiff of Mahanund, dated the 11th day of August 1848.

Sumbhoochunder Ghosaul, (Defendant,) Appellant,
versus

Rajeeblochun Banerjee, (Plaintiff,) Respondent.

CLAIM, for possession of one beegah and two cottahs of purchased lakhiraj brimottur (rent-free) land, with mesne profits, calculated at rupees fifty-two, annas four, (Company's rupees 52-4.)

The papers of this case show that the plaintiff, on the strength of a kuballa, bill of sale, dated the 23rd day of Srabun 1238 B. S., instituted this suit.

The defendant, in his answer, denies *in toto* having given the bill of sale aforesaid, and avers that he has not sold the land in dispute to the plaintiff.

The moonsiff having decreed the case, the appellant has preferred this appeal.

In this case, the moonsiff has not conformed to the rule laid down in Section 3, Act XII. 1843, which requires that the moonsiff should record "*the points to be decided, the decision, and the reasons for the decision.*" The moonsiff has merely recorded the reasons for his decision. Hence this decision of the moonsiff is not in accordance with the spirit of the aforesaid Act, that is to say, with the spirit of Section 3, Act XII. 1843. I therefore decree this appeal, and reverse the decision passed by the moonsiff on the 11th day of August 1848, and I direct this case be remanded to the moonsiff, with instructions to restore the case to its original number on his file, and record a new decision on the case, supplying the defects noticed in this decree.

Costs to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 10TH JUNE 1850.

Case No 307 of 1848.

Appeal from the decision of Baboo Jugbundoo Banerjee, Moonsiff of Byedbattee, dated the 11th day of August 1848.

Ranee Kattyanec, (Defendant,) Appellant,
versus

Sheikh Shumsooddeen, (Plaintiff,) Respondent.

CLAIM, for the reversal of a sale effected under Regulation V. 1812, and to recover the value of the paddy and straw, laid at rupees fifty-six, annas eight.

It is stated in the plaint that the plaintiff does not hold any maul (rent-paying) land, notwithstanding this fact, the managers of the estate of the defendant, on the pretence of claiming the arrears of rent due, enforced the provisions of Act V. 1812 against the plaintiff, thereby causing a loss of paddy and straw, the produce of his *peeruttur* land.

The defendant, in her answer, contends that there was a jumma of rupees twenty-four, annas eight, gundahs eleven, in the name of the plaintiff and one Eyeenooddeen; that in consequence of their, that is to say, the plaintiff and Eyeenooddeen, having failed to pay the rent due up to the month of Poos 1254 B. S., the defendant caused a sale, according to law, of the paddy and the straw cultivated by them, that is to say, the plaintiff and Eyeenooddeen.

The moonsiff having decreed the case, the appellant has preferred this appeal.

In this case, the moonsiff has not conformed to the rule laid down in Section 3, Act XII. 1843, which requires that he should record "the points to be decided, the decision thereon, and the reasons for the decision;" the moonsiff has merely recorded the reasons for his decision. Hence this decision of the moonsiff is not in accordance with the spirit of the aforesaid Act, that is to say, with the spirit of Section 3, Act XII. 1843. I therefore decree this appeal, and reverse the decision passed by the moonsiff, on the 11th day of August 1848, and I order the case be remanded to the moonsiff, with instructions to restore the case to its original number on his file, and record a new decision on this case, supplying the defects noticed in this decree.

Costs to be paid by each party respectively for the present, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 12TH JUNE 1850.

Case No. 308 of 1848.

Appeal from the decision of Baboo Jugbundoo Banerjee, Moonsiff of Byedbattee, dated the 29th day of August 1848.

Bishonauth Sarbhoom Bhuttacharge, Jodoonauth Banerjee, Nundo Kishore Bose, and Govind Chunder Bose, (Defendants,) Appellants,

versus

Radhamohun Nundee, Rajnarayn Nundee, Sreedhur Nundee, and Nundokoomar Nundee, (Plaintiffs,) Respondents.

CLAIM, for the reversal of an order passed under Regulation V. 1812, and for a refund of the money deposited with interest, laid at Company's rupees sixty-four, annas fourteen, gundahs ten, (Company's rupees 64-14-10.)

It is set forth in the plaint that the plaintiff holds a jumma of rupees ninety-eight, annas ten, and although they, the plaintiffs, had paid the rent for the year 1253 B. S. to the managers of the estate belonging to the defendants, they, the defendants, unnecessarily enforced the provisions of Regulation V. 1812 against them, in consequence of which the plaintiffs deposited the sum of rupees fifty-four, anna one, gundahs ten, in the office of the collector, and subsequently instituted this suit.

With the exception of Rajnarayn Nundee, the other defendants, in their answer, state that the plaintiffs hold a jumma of rupees ninety-nine, annas six, gundahs five, and failing to pay the rent due for 1253 B. S., they, the defendants, enforced the provisions of Regulation V. 1812, and realized the same, that is to say, the rent due.

The moonsiff having decreed the case, the appellants have preferred this appeal.

In this case the moonsiff has not conformed to the rule laid down in Section 3, Act XII. 1843, which requires that he, the moonsiff, should record *the points to be decided, the decision thereon, and the reasons for the decision*; but he has merely recorded the reasons for his decision. Hence his decision is not in accordance with the spirit of the aforesaid Act, that is to say, of Section 3, Act XII. 1843. Therefore I decree this appeal, and reverse the decision passed by the moonsiff on the 29th day of August 1848, and order that the case be remanded to the moonsiff, with instructions to restore the case to its original number on his file, and record a new decision in this case, supplying the defects noticed in this decision.

Costs are to be paid by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 12TH JUNE 1850.

Case No. 309 of 1848.

Appeal from the decision of Baboo Juggobundoo Banerjee, Moonsiff of Byedbattee, dated the 29th day of August 1848.

Bishonath Sarbhoom Bhuttacharge, Jodoonath Banerjee, Govindchunder Bose, and Nundokishore Bose, (Defendants,) Appellants,

versus

Radhamohun Nundee, Rajnarain Nundee, Sreedhur Nundee, and Nundocomar Nundee, (Plaintiffs,) Respondents.

CLAIM, for the reversal of an order passed under Regulation V. 1812, and for the refund of the money deposited, with interest, laid at Company's rupees twenty-one, annas nine, gundahs fifteen, (Company's rupees 21-9-15.)

It appears from the papers in this case that the moonsiff considered this case to be similar to that of No. 13, also instituted by the same plaintiffs and appealed under No. 308 of 1848; and he decreed this case on the same grounds as recorded by him, in his decision, on the case No. 13; and appellants, being dissatisfied with the decision passed by the moonsiff, preferred this appeal.

The moonsiff has not conformed to the rule laid down in Section 3, Act XII. 1843, which requires that he, the moonsiff, should record "the points to be decided, the decision thereon, and the reasons for the decision;" but has merely recorded the reasons for his decision; hence this decision is not in accordance with the spirit of the aforesaid Act, that is to say, Section 3, Act XII. 1843: therefore I decree this appeal, and reverse the decision passed by the moonsiff, on the 29th day of the month of August 1848, and order that the case be remanded to the moonsiff, with instructions to restore the case to its original number on his file, and record a new decision in this case, supplying the defects noticed in this decree.

Costs are to be paid, for the present, by each party respectively, and ultimately by the losing party.

The value of the stamp on the petition of appeal is to be refunded to the appellants.

THE 12TH JUNE 1850.

Case No. 311 of 1848.

Appeal from the decision of Baboo Juggobundoo Banerjee, Moonsiff of Byedbattee, dated the 17th day of August 1848.

Koylaschunder Mookerjee, (Plaintiff,) Appellant,

versus

Jutton Baudoree and Doyaram Baudoree, (Defendants,)

Respondents.

CLAIM, for the recovery of the sum of Company's rupees one hundred and fifty, being the amount advanced as a loan on a bond, including interest.

It appears from the papers in this case that the defendants borrowed a certain sum of money from the plaintiff, on a bond, dated the 2nd day of Bhadoon 1247 B. S., which, with the interest accruing thereon, amounted to rupees two hundred; of this sum, that is to say, of this two hundred rupees, the defendants paid the sum of fifty rupees, and, failing to liquidate the balance of one hundred and fifty rupees, the plaintiff filed this suit for the amount.

The defendants, in their answer, deny the debt, and state that they had not ever known the plaintiff, who has filed this action against them at the instigation of their enemy, one Rajmohun Ghuttuck.

The moonsiff having dismissed the case, and the appellant, being dissatisfied, preferred this appeal.

The moonsiff has not in this case conformed to the rule laid down in Section 3, Act XII. 1843, which requires that he, the said moonsiff, should record "*the points to be decided, the decision thereon, and the reasons for the decision,*" the moonsiff has merely recorded the reasons for his decision. Hence this decision is not in accordance with the spirit of the Act aforesaid, that is to say, with Section 3, Act XII. 1843: therefore I decree this appeal, and reverse the decision passed by the moonsiff on the 17th day of August 1848, and I direct that the case be remanded to the moonsiff, with instructions to restore the case to its original number on his file, and record a new decision in this case, supplying the defects noticed in this decree.

Costs are for the present to be paid by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 12TH JUNE 1850.

Case No. 317 of 1848.

Appeal from the decision of Baboo Taruckchunder Ghose, Moonsiff of Mahanund, passed on the 5th day of September 1848.

Shunjoo Beebee, daughter of the late Sheikh Buxoo, deceased,
(Defendant,) Appellant,

versus

Syud Fuzleh Moulah and Syud Buzleh Moulah, (Plaintiffs,) Respondents.

CLAIM, for arrears of rent including interest, laid at Company's rupees two, annas four, gundahs ten, (Company's rupees 2-4-10.)

The plaintiffs sue the defendant for the sum of rupees two, annas two, gundahs two, and two cowrees, being the actual balance of rent due by her, the defendant, up to the month of Aughun 1254 B. S., and for the sum of two annas, seven gundahs, and two cowrees, on account of interest thereon, thus making a total sum of rupees two, annas four, gundahs ten.

The defendant, in her answer, denies the claim, and states she does not hold any land belonging to the plaintiff.

The moonsiff having decreed the case, the appellant has preferred this appeal.

The moonsiff has not in this case conformed to the rule laid down in Section 3, Act XII. 1843, which requires that he, the said moonsiff, should record "*the points to be decided, the decision thereon, and the reasons for the decision:*" the moonsiff has merely recorded the reason for his decision; hence this decision is not in accordance with the spirit of the aforesaid Act, that is to say, with Section 3, Act XII. 1843: therefore I decree this appeal, and reverse the

decision of the moonsiff passed on the 5th day of September 1848, and direct that the case be remanded to the moonsiff, with instructions to restore the case to its original number on his file, and record a new decision in the case, supplying the omissions noticed in this decree.

Costs are for the present to be paid by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 17TH JUNE 1850.

Case No. 318 of 1848.

Appeal from the decision of Baboo Nobinchunder Mitter, Moonsiff of Rajapore, dated the 28th day of August 1848.

Thakoorloss Shoorul, (Defendant,) Appellant,

versus

Ramjeeewn Ghose, (Plaintiff,) Respondent.

CLAIM, for the recovery of rupees sixty-six, annas six, gundahs eighteen, cowrees three, being the amount of a sum of money advanced on loan on a bond, including interest.

The plaint sets forth that the defendant had borrowed the sum of rupees ninety-nine from the plaintiff, on a bond bearing date the 18th day of Srabun 1249 B. S., on the condition that he would repay fifty rupees (50 rupees) in the month of Poos following, and the sum of rupees forty-nine in the month of Chytr of the same year, that is to say, in the year 1249 B. S., with all accruing interest: that, in the month of Maugh 1249 B. S., the defendant repaid rupees forty-nine, on account of the principal money, and five rupees on account of the interest, leaving unpaid the sum of rupees seventy-nine, annas fifteen, gundahs five, including the interest; of this sum, that is to say, the sum of rupees seventy-nine, annas fifteen, gundahs five, the defendant subsequently paid the sum of rupees seventeen, and failing to pay the balance, the plaintiff has instituted this suit against him.

The defendant, in his answer, denies the debt, and avers that the plaintiff has sued him from enmity, on the strength of a false bond.

The moonsiff states that the point for adjudication in this case is, whether the bond filed by the plaintiff is genuine or otherwise. From the evidence of the four witnesses to the execution of the bond, the demand of the plaintiff has been satisfactorily proved; and the objection raised by the defendant, that the case has been instituted from enmity, has not been established; on the contrary, on the defendant being questioned by the moonsiff, he, the defendant, admits being indebted to the plaintiff the sum of rupees seven. Hence it is evident from his own admission that he is a debtor to the plaintiff. The moonsiff therefore decreed the case.

It is urged in the appeal, that the appellant could produce only one witness, the others having all of them absconded, to prove the enmity; and that the bond filed by the plaintiff is evidently newly written on old paper, which paper had been made to appear old by soiling it with the hand; and that the moonsiff unjustly decided the case without paying any attention to the above circumstances.

The points for adjudication in this case are as follow:—

First.—Whether the demand of the plaintiff is just or otherwise?

Secondly.—Whether the bond filed by the plaintiff has been proved or not?

Thirdly.—Whether the objections raised by the appellant regarding the enmity, are true or not? and whether the paper on which the bond had been written, had been soiled by the hand to make it appear old?

From the evidence of the four witnesses examined for the plaintiff, the first and second points appear to me to have been satisfactorily proved. With regard to the point urged by the appellant of enmity towards him, the appellant, by the plaintiff, I cannot believe it, because, as the moonsiff states in his decision, he, the appellant, admits that he is a debtor to the plaintiff, and I do not suppose the plaintiff would have lent him, the appellant, money, if he, the plaintiff, had entertained enmity towards him. Moreover, there is not any appearance on the bond which can bear out the assertion of the appellant that it has been soiled with hands. Hence the decision of the moonsiff appears to me sound and just, and the objections of the appellant frivolous; therefore I dismiss this appeal, with costs.

THE 17TH JUNE 1850.

Case No. 323 of 1848.

Appeal from the decision of Baboo Jugbundoo Banerjee, Moonsiff of Byedbattee, dated the 15th day of September 1848.

Nokoor Doss, (Defendant,) Appellant,

versus

Caseenath Mangce, Bishonauth Mangce, Nuffer Mangce, Plaintiffs,
Rammohun Bhuttacharge, Joynarayn Bhuttacharge, Gopeenauth
Bhuttacharge, Neemye Napeet, Juggiswur Mangce, Kenaram Doss,
Nuffer Barowce, Gopaul Adduck, Bholanauth Kolca, Nuffer
Bangdee, Nuffer Doss, Sheikh Ameer, Mookhtaram Pattur,
Suroop Satra, Soobul Moochee, Puddo Kolca, and Kaleedoss
Doss, (Defendants,) Respondents.

CLAIM, for the reversal of a decision passed under Act IV. 1840, and to be placed in possession of the "brimutter" land taken in farm, laid at rupees nineteen.

The plaint sets forth that the plaintiffs had, on the 15th day of Bysakh 1241, taken in farm three beegahs and a half of

“brimutter” lakhiraj land from the defendant, Rammohun Bhuttacharge, on an annual rent of rupees seven, annas four: that the plaintiffs had, in the year 1250, sublet one beegah and two cottahs, which one beegah and two cottahs of land was a parcel of the aforesaid three beegahs and a half, to the defendant Nokoor Doss, on a lease for four years; at the expiration of this lease for four years, the plaintiffs sublet the same parcel of land to the defendant, Neemye Napit, and the defendant, Nokoor Doss, filed a suit under Act IV. 1840, and obtained a decree; in consequence of which the plaintiff instituted this suit.

The defendant, Nokoor Doss, in his answer, states that he had, on the 25th day of Bysakh 1232 B. S., taken in farm the land in dispute, from the defendant. Rammohun Bhuttacharge, at an annual rent of seven rupees, and that he is now in possession of it, the said land.

The answer given by the defendant, Rammohun Bhuttacharge, supports the plaint.

The moonsiff having decreed the case, the appellant has preferred this appeal.

The moonsiff has not in this case conformed to the rule laid down in Section 3, Act XII. 1843, which requires that he, the moonsiff, should record “*the points to be decided, the decision thereon, and the reasons for the decision;*” but he has merely recorded the reasons for his decision. Hence the decision of the moonsiff is not in accordance with the spirit of the aforesaid Act, that is to say, with the spirit of Section 3, Act XII. 1843: therefore I decree this appeal, and reverse the decision of the moonsiff, passed on the 15th day of September 1848, and direct that the case be remanded to the moonsiff, with instructions to restore the case to its original number on his file, and record a new decision in this case, supplying the defects recorded in this decree.

Costs are to be paid by each party respectively for the present, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 17TH JUNE 1850.

Case No. 324 of 1848.

Appeal from the decision of Baboo Doorgapersaud Ghose, Moonsiff of Nyaserai, passed on the 7th day of September 1848.

Roopchand Panjaree, (Defendant,) Appellant,

versus

Jeetoo Panjaree, (Plaintiff,) Respondent.

CLAIM, for the recovery of rupees thirty-one, annas nine, gun-dahs two, being the amount of a sum of money advanced on loan on a bond, including interest.

It appears from the papers in this case that the plaintiff advanced the sum of thirty rupees on loan to the defendant on a bond, bearing date the 20th day of Poos 1247 B. S.: the interest accruing thereon amounted to rupees eighteen, annas fourteen, gundahs nine and a half, making a total sum of rupees forty-eight, annas fourteen, gundahs nine and a half; of which the defendant paid eighteen rupees, that is to say, ten rupees on account of the principal money, and eight rupees on account of interest; and failing to pay the balance, that is to say, thirty rupees, fourteen annas, and nine and a half gundahs, the plaintiff instituted this suit.

The defendant, in his answer, denies the debt, and avers that he was absent from his home on the date on which the bond is said to have been executed, and that the plaintiff has sued him from enmity.

The moonsiff having decreed the case, the appellant has preferred this appeal.

In this case the moonsiff has not conformed to the rule laid down in Section 3, Act XII. 1843, which requires that he, the moonsiff, should record "the points to be decided, the decision thereon, and the reasons for the decision." In this case the moonsiff has merely recorded the reasons for his decision. Hence the decision of the moonsiff is not in accordance with the spirit of the aforesaid Act, that is to say, with the spirit of Section 3, Act XII. 1843: therefore I decree this appeal, and reverse the decision of the moonsiff 'passed on the 7th day of September 1848, and direct that the case be remanded to the moonsiff to restore the case to its original number on his file, and then record a new decision, supplying the defects recorded in this decree.

Costs to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 17TH JUNE 1850.

Case No. 327 of 1848.

Appeal from the decision of Mr. A. Davidson, late head or Sudder Moon-siff of Serampore, passed on the 12th day of August 1848.

Ramchunder Doss, (Plaintiff,) Appellant,

versus

Maiher Khansamah and Huranee Beebee, widow of the late Dhunnoo Tailor, deceased, (Defendants,) Respondents.

CLAIM, for damages sustained by the loss of paddy, laid at Company's rupees ninety-three, annas twelve, (Company's rupees 93-12.)

It is set forth in the plaint that Maiher Khansamah obtained a decree in case No. 1486, and, in execution of which, caused the attachment of four thatched houses and one hundred and twenty-five

maunds of paddy, (alleging it to be one hundred maunds) belonging to the plaintiff, on the 15th day of Maugh 1253 B. S., owing to his being the surety and security of the defendant in the aforesaid case, and Maiher Khansamah, having subsequently taken charge of the paddy, allowed it to become damaged: the plaintiff therefore instituted this suit.

The defendant, Maiher Khansamah, in his answer, denies having caused any damage to the paddy, and that the plaintiff had himself caused it.

The head or sudder moonsiff having dismissed the case, the appellant has preferred this appeal.

The moonsiff has not in this case conformed to the rule laid down in Section 3, Act XII. 1843, which requires that he, the moonsiff, should record "*the points to be decided, the decision thereon, and the reasons for the decision;*" but he, the moonsiff, has merely recorded the reasons of his decision. Hence his decision is not in accordance with the spirit of the aforesaid Act, that is to say, the spirit of Section 3, Act XII. 1843: therefore I decree this appeal, and reverse the decision passed by the moonsiff on the 12th day of August 1848, and direct that the case be remanded to the moonsiff, with instructions to restore the case to its original number on his file, and record a new decision, supplying the omissions recorded in this decree.

Costs to be paid by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 20TH JUNE 1850.

Case No. 109 of 1840.

Appeal from the decision of Baboo Juggobundoo Banerjee, Moonsiff of Byedbattee, passed on the 21st day of March 1850.

Bishonauth Banerjee, (Defendant,) Appellant,

versus

Rijkissore Banerjee and Anondomoe Banerjee, (Plaintiffs,) Ramchand Dhoba, Monmoheene Debea, and Omachurn Mookerjee, (Defendants,) Respondents.

CLAIM, for the reversal of a decision passed under Regulation VII. 1799, and to obtain possession of certain lackhiraj rent-free land with its rent, laid at Company's rupees one hundred and nineteen, annas twelve, (Company's rupees 119-12.)

It appears from the papers in this case that the appellant preferred this appeal on the 26th day of April 1850, stating he would subsequently file his detailed grounds for appeal; but he, the appellant, has neglected and failed to do so for a period exceeding six

weeks. Therefore I dismiss this appeal, with costs on default under the provisions of Act XXIX. 1841.

THE 27TH JUNE 1850.

Case No. 334 of 1848.

Appeal from the decision of Pundit Sreeram Turkolunkar, head Moonsiff of Hooghly, dated the 30th day of August 1848.

Mirza Wahid Ali, (Plaintiff,) Appellant,

versus

Punchanun Chuckerbuttee, (Defendant,) Respondent.

Aga Mohummud Yeosoof, Claimant.

CLAIM, for the arrears of rent including interest, laid at Company's rupee one, annas two, gundahs three, cowrees two, (Company's rupee 1-2-3-2.)

The plaintiff states that he is the muttuwallee of the wuqf mohaul, which belonged to the late Nusrutoolla Khan of Khankrajole; that within the village called Alifnuggur *alias* Gorebarree, adjoining to the said mohaul, there was a jumma of rupee one, annas five, gundahs thirteen, in the name of the late Gungaram Kandoor, realized through Punchanun Chuckerbuttee; that in consequence of the defendant failing to pay the arrears of rent due from the month of Kartikh to Chyte 1254 B. S., which arrears of rent amount to rupee one, annas two, gundahs three, cowrees two, including interest, the plaintiff instituted the suit.

The defendant admits the demand of the plaintiff, and declares that he was unable to pay the amount from want of means, &c.

The claimant, Aga Mohummud Yeosoof, states, in his petition, that, he and one Abool Hoosein Khan were appointed muttuwallees of the aforesaid wuqf mohaul; that the plaintiff, having fraudulently styled himself the muttuwallee, enforced the provisions of Regulation V. 1812 against the ryuts Ramsoonder Seit and others; on which occasion he, the claimant, presented a petition to the collector, who rejected the statement of the plaintiff respecting his, the plaintiff's, being the muttuwallee; notwithstanding which the plaintiff, with a view to obtain a document to the said effect, that is to say, to the effect of his, the plaintiff's, being the real muttuwallee, has instituted this suit, and he has induced the defendant to file an answer acknowledging the claim, &c.

The head moonsiff of Hooghly states, although the plaintiff has produced some witnesses, and has filed some thoka papers, and the defendant acknowledges the demand, still from the papers filed by the claimant, that is to say, a copy of the plaint filed by the plaintiff in the office of the collector, together with that of the order passed by the collector thereon, and a copy of a decision No. 331, passed by the head moonsiff on the 7th day of June 1844, it does not appear

that the plaintiff is the muttuwallee, nor does it appear that he, the plaintiff, has been appointed the muttuwallee by any person or public officer, who possessed the competent authority or power to nominate him, the aforesaid plaintiff, to be muttuwallee; that the plaintiff, with the view to obtain a document, leagued with the defendant and induced the said defendant to file a kubool-juwaub in the case. Therefore, under these circumstances, the head moonsiff dismissed the case.

The appellant contends that, according to the conditions of the fifteenth paragraph of the wuqfnamah given by the late Nusrutoolla Khan to his son, Abool Hoosein, he became the muttuwallee; but owing to his, Abool Hoosein's, being childless, he, the Abool Hoosein aforesaid, resigned the situation of muttuwallee, and appointed the appellant, who is the son-in-law of Abool Hoosein, to be the muttuwallee of the wuqf mohaul, and he has accordingly continued performing the duties of muttuwallee; and these facts have been proved by the witnesses for the appellant. Moreover, the appellant filed a suit under No. 164, against a ryot by name Gobind Ghose, in the court of the head moonsiff, and obtained a decree on the 28th day of July 1848, which became ultimately final; that, in a case of execution of decree No. 132, the head moonsiff enforced the decree against the appellant, owing to his, the appellant's, being the muttuwallee; and the moonsiff has invariably demanded the amount of the decree from him, the appellant. Hence the head moonsiff's having dismissed the case on the ground that the appellant does not appear to be the true muttuwallee, is contrary to his own former decisions, &c., abovementioned, and is manifestly unjust. Further, the appellant having been dissatisfied with the orders of the collector above noticed, he, the appellant, appealed to the revenue commissioner, and the revenue commissioner remanded the case to the collector for re-trial, which case is still pending the decision of the collector: hence the order of the collector is no bar in this case, &c.

Aga Mohummud Yeosoof, the claimant, filed also a petition in this court, stating that the appellant having omitted to include the name of the claimant in the appeal, the same, that is, the petition of appeal, is not admissible in a court of justice.

The appellant urges, in his appeal, that the head moonsiff has decided this case contrary to the decision passed by him in case No. 164, on the 28th day of July 1848, and the order passed by him in the decree-jarce case No. 132; and he, the appellant, further states that the order passed by the collector, rejecting the petition presented under Regulation V. 1812, has been reversed by the commissioner, and the case remanded for re-trial. I consider a new trial expedient in order to set at rest the foregoing objections. Hence I decree this appeal, and reverse the decision passed by the head moonsiff of Hooghly, Pundit Sreeram Turkolunkar, on the 13th day of August 1848, and I order that this case be remanded to the

head moonsiff, with instructions to restore the case to its original number on his file, and, having paid attention to the points noticed in this decree, to re-try the case.

Costs are to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 27TH JUNE 1850.

Case No. 335 of 1848.

Appeal from the decision of Pundit Sreeram Turkolunkar, head Moon-siff of Hooghly, passed on the 30th day of August 1848.

Mirza Wahid Ali, (Plaintiff,) Appellant,

versus

Ramchand Teewur, (Defendant,) Respondent.

CLAIM, for the arrears of rent including interest, laid at Company's rupees eight, annas six, gundahs nineteen, cowree one, (Company's rupees 8-6-19-1.)

It is set forth in the plaint that the plaintiff, styling himself to be the muttuwallee of the wuqf mohaul of the late Nusrutoolla Khan, of Khankrajole, alleges that, within the aforesaid mohaul, there is a tank belonging to Bair Aliff Khan, &c., which the defendant had taken in farm at an annual rent of rupees one hundred and forty-seven, annas three, and, on the defendant failing to pay the balance of his rent due for the year 1254 B. S., amounting to rupees eight, annas six, gundahs nineteen, cowree one, which sum includes all accruing interest thereon, that is to say, on the balance of rent, he, the plaintiff, instituted this suit.

The defendant, in his answer, admits the demand made by the plaintiff, and states that, owing to his being in reduced circumstances, he was unable to pay the same.

The moonsiff deemed this case to be similar to that of No. 165; and on the perusal of all the papers in both the cases, he, the moonsiff, considered the demand of the plaintiff to be unjust, because he, the appellant, had not been duly appointed to be the muttuwallee of the said wuqf mohaul, and therefore dismissed the case.

It is urged, in the appeal, that the appellant being dissatisfied with the decision passed by the head moonsiff in this case No. 165, he, the appellant, has appealed against it under No. 334, and, having already detailed at length his reasons and grounds for appealing in that case, he solicits that this appeal may be decided, reference having been duly made to the reasons recorded in those cases.

This case is precisely similar to the appeal case No. 334, and the reasons for my decision given in that case are equally applicable to this case. I therefore do not deem it necessary to recapitulate them in this decree. Hence I decree this appeal, and reverse the decision

passed by the head moonsiff, Pundit Sreeram Turkolunkar, on the 30th day of August 1848, and I order that the case be remanded to the head moonsiff, with instructions to restore the case to its original number on his file, and, having paid attention to the points noticed in this decree, to re-try the case.

Costs are to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant. •

THE 27TH JUNE 1850.

Case No. 336 of 1848.

Appeal from the decision of Pundit Sreeram Turkolunkar, head Moonsiff of Hooghly, passed on the 30th day of August 1848.

Mirza Wahid Ali, (Plaintiff,) Appellant,

versus

Joygopaul Dutt, (Defendant,) Respondent.

CLAIM, for arrears of rent, including interest, laid at Company's rupee one, annas two, gundahs eighteen, cowrees three.

It appears from the papers in this case that the plaintiff styled himself to be the muttuwallee of the wuqf mohaul belonging to the late Nusrutoolla Khan of Khankrajole, and, alleging that in Alif-nugur *alias* Gorebaree situated within the aforesaid mohaul there is a jumma of rupee one, annas thirteen, gundahs eighteen, in the name of the late Nundolaul Dutt, realized through the defendant, who failing to pay the balance of rent due for the year 1254 B. S., that is to say, the balance amounting to rupee one, annas two, gundahs eighteen, and cowrees three, which sum includes the interest accruing, the plaintiff has instituted this suit.

The defendant, in his answer, admits the demand of the plaintiff, and declares that, notwithstanding that he, the defendant, is prepared to discharge the said demand, the plaintiff would not receive the amount, and has sued with the motive of causing distress.

The head moonsiff deemed this case to be similar to the one instituted under No. 165, and, on the perusal of all the papers filed in both cases, he, the moonsiff, considered that, as the plaintiff had not been duly appointed muttuwallee of the wuqf mohaul, his demand is unjust; and therefore dismissed the case.

It is urged, in appeal, that the appellant, having been dissatisfied with the decision of the moonsiff passed by the moonsiff in case No. 165, has appealed against it under No. 334, and, having already detailed at length his grounds for appealing in that case, he, the appellant, solicits that this appeal may be decided with reference to those reasons.

This case is precisely the same and similar to the appeal case No. 334, and the reasons for my decision given in the case are, in like manner, equally applicable to this case: I therefore do not deem it necessary to recapitulate them in this decree. Hence I decree this appeal, and reverse the decision passed by the head moonsiff, Pundit Sreeram Turkolunkar, on the 30th day of August 1848, and I order that this case be remanded to the head moonsiff, with instruction to restore the case to its original number on his file, and, having paid attention to the points noticed in this decree, to re-try the case.

The costs are to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 28TH JUNE 1850.

Case No. 338 of 1848.

Appeal from the decision of Baboo Taruckchunder Ghose, Moonsiff of Mahanaud, passed on the 18th day of September 1848.

Sibkisto Mitter and Omeischunder Mitter, (Plaintiffs,) Appellants,

versus

Chytunchurn Bhurr, Gooroochurn Bhurr, Thakoordoss Bhurr, Tarrachurn Bhurr, Okkhoy Bhurr, and Anuntho Bhurr, (Defendants,) Respondents.

CLAIM, for arrears of rent, including interest, laid at Company's rupees nine, annas eleven, gundahs thirteen, cowrees two, (Company's rupees 9-11-13-2.)

The plaintiff sues the defendants for rupees nine, annas eight, being the amount of arrears of rent due for the year 1254 B. S., and the sum of annas three, gundahs thirteen, and cowrees two, on account of interest, thus making a total of rupees nine, annas eleven, gundahs thirteen, cowrees two, (Company's rupees 9-11-13-2.)

The defendants, in their answer, state that they had paid the whole of the rent for the year 1254 B. S., and that they had obtained a receipt for it, which fact the plaintiffs deny; and the plaintiffs have sued them, the defendants, from enmity, falsely alleging that the jumma is rupees nine, annas eight, whereas in truth the rent is only rupees nine, anna one.

The moonsiff having decreed the case for rupees nine, anna one, with interest, the appellants preferred this appeal.

In this case the moonsiff has not conformed to the rule laid down in Section 3, Act XII. 1843, which requires that he, the moonsiff, should record "the points to be decided, the decision thereon, and the reasons for the decision;" but he, the moonsiff, has, in this case, merely recorded the reasons for his decision. Hence this decision of the moonsiff is not in accordance with the spirit of the aforesaid Act,

that is to say, the spirit of Section 3, Act XII. 1843. I therefore decree this appeal, and reverse the decision passed by the moonsiff of Mahanaud on the 18th day of September 1848, and order that the case be remanded to the moonsiff, with instructions to restore the case to its original number on his file, and record a new decision in this case, supplying the defects noticed in this decree.

Costs for the present are to be paid by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 28TH JUNE 1850.

CASE No. 339 of 1848.

Appeal from the decision of Baboo Doorgapersaud Ghose, Moonsiff of Nyaserai, passed on the 8th day of September 1848.

Moheschunder Biddiabagis, and, after his death, Gopaul Doss Banerjee, the son of the deceased, (Plaintiff,) Appellant,

versus

Goverdhun Kolea, (Defendant,) Respondent.

CLAIM, for arrears of rent including interest, laid at Company's rupees fifteen, annas six.

The plaintiff sues the defendant for the sum of rupees fifteen, annas six, that is to say, rupees fourteen, annas seven, on account of rent from the month of Sraubun to the month of Maugh 1254 B. S., and for the sum of annas fifteen, on account of interest accruing.

The defendant, in his answer, denies the demand, and avers that he had paid the whole of the rent for the years 1253 and 1254 B. S. to Rakhaldoss Mookerjee, who is the proprietor of the land.

The moonsiff nonsuited the case, and the appellant in consequence preferred this appeal.

In this case the moonsiff has not conformed to the rule laid down in Section 3, Act XII. 1843, which requires that he, the moonsiff, should "*record the points to be decided, the decision thereon, and the reason for the decision*;" but he, the moonsiff, has merely recorded in this case the reasons for his decision. Hence this decision of the moonsiff is not in accordance with the spirit of the aforesaid Act, that is to say, in accordance with the spirit of Section 3, Act XII. 1843: therefore I decree this appeal, and reverse the decision passed by the moonsiff of Nyaserai on the 8th day of September 1848, and order that the case be remanded to the moonsiff, with instructions to restore the case to its original number on his file, and record a new decision in the case, supplying the defects noticed in this decree.

Costs for the present are to be paid by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 29TH JUNE 1850.

Case No. 18 of 1847.

Appeal from the decision of Syud Oosman Ali, late Additional Principal Sudder Ameen of Hooghly, passed on the 12th day of August 1847.

Luckcemonee Dasee, widow of the late Lollmohun Sein, deceased, Bissumbhur Sein, Pooleenbeharee Sein, and Bishomonee Dasee, Zemindars, (Defendants,) Appellants,

versus

Rajkisto Mitter, execntor of the estate of and guardian of Sooruthnath Mullick, a minor, and son of the late Sectanath Mullick, deceased, (Plaintiff) the Collector of Hooghly, and Rammohun Ghose, putneedar of lot Baildoobee, (Defendants,) Respondents.

THIS suit is for the reversal of that part of the order passed by the additional principal sudder ameen which awards costs for suit, laid at Company's rupees eight hundred and sixteen, annas seven.

The plaintiff sues for the reversal of a sale effected under the provisions of Regulation VIII. 1819, and summary order passed by the Sudder Board of Revenue, and to obtain possession of a three annas and four gundahs share in lot Baildoobee as a putnee tenure, calculating the suit at rupees four thousand, three hundred, and sixty-one, anna one, (Company's rupees 4,361-1,) that is to say,

Proceeds of sale,	2,400
The profits arising from the aforesaid three annas, four gundahs share,	1,600
Wasilat, mesne profits,	361 1
Total,	4,361 1

The defendants Rammohun Ghose and the collector of Hooghly, in their answer, contend that the sale was not illegal, and that it was subsequently confirmed by the Sudder Board of Revenue.

The late additional principal sudder ameen, considering the public sale had been irregularly conducted, and the plaintiff having failed to establish his claim for mesne profits, reversed the sale, and decreed the case for a sum less than that demanded by the plaintiff; and he, the additional principal sudder ameen, saddled the zemindars or appellants with the whole costs of suit, including interest.

It is urged, in appeal, that, in consequence of the appellants not having been served with the usual notice and proclamation, they were unacquainted with the fact of the institution of this suit against them, hence they could not file an answer in the suit; that although the late additional principal sudder ameen decreed the case for a

sum less than that demanded by the plaintiffs, he, the late additional principal sudder ameen, has unjustly saddled the appellants with the whole costs of suit; and, therefore, they appeal against the order regarding costs.

This case was, on the 13th day of December 1840, dismissed under the provisions of Act XXIX. 1841, and subsequently restored to its original number on the file, under Act XVI. 1845.

On the 21st day of May 1850, a proceeding was held under the provisions of Section 10, Regulation XXVI. 1814, it being necessary to investigate whether the order of the late additional principal sudder ameen, decreeing the case for a sum less in amount than the sum demanded by the plaintiff, and saddling the appellants with the costs of suit on the whole amount of the demand, including interest, was just or otherwise. The parties were consequently ordered to produce further proof, should either party be desirous to do so, within the period of eight days. Neither of the parties produced any additional proof; but the appellant filed a petition, praying that the case may be decided with reference to the proofs already adduced by him in the case.

In this case the late additional principal sudder ameen has not conformed to the rule laid down in Section 3, Act XII. 1843, which requires that he, the additional principal sudder ameen, should record "*the points to be decided, the decision thereon, and the reasons for the decision*;" but he, the late additional principal sudder ameen, has merely recorded the reasons for his decision. Hence this decision of the late additional principal sudder ameen is not in accordance with the spirit of the said Act, that is to say, in accordance with the spirit of Section 3, Act XII. 1843. Hence I decree this appeal, and reverse the decision passed by the late additional principal sudder ameen on the 12th day of August 1847, and order that the case be remanded to the principal sudder ameen, with instructions to restore the case to its original number on his file, and record a new decision, supplying the defects noticed in this decree.

Costs of suit are for the present to be paid by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellants.

ZILLAH JESSORE.

PRESENT: C. STEER, Esq., OFFICIATING JUDGE.

THE 1ST JUNE 1850.

Case No. 21 of 1849.

Appeal against the decision of Baboo Opendar Chunder Nyaruttun Bahadoor, Principal Sudder Ameen of Jessore, dated the 17th July 1849.

Bholanath Mitter, (Defendant,) Appellant,

versus

Bhowanee Deen and Kaleekapersaud, (Plaintiffs,) Respondents.

THE plaintiffs, laying their action at rupees 646-9-8, sue for the balance, with interest, of a debt on bond executed in their favor by the defendant.

The defendant denies the debt *in toto*, and pleads that the suit is brought against him out of spite arising from certain disputes and quarrels existing between the parties.

The principal sudder ameen declared the debt fully proved, and accordingly decreed the suit in favor of the plaintiffs: and seeing nothing in the grounds of appeal or in the record to justify any interference with this decision, I uphold it, dismissing this appeal, with costs.

THE 5TH JUNE 1850.

Case No. 4 of 1848.

Appeal against the decision of Baboo Loknath Bose, second Principal Sudder Ameen of Jessore, dated 3th January 1848.

Shree Gopal Paul Chowdree, for himself and as one of the guardians of Kishen Gopal Paul Chowdree and others, minors, and Bimla Dassea and Shreemunt Kund, as joint guardians with the above Shree Gopal of the said minors, appellants in the suit of Shair Khan and Baboo Khan, Plaintiffs, Respondents,

versus

The Appellants, Petumber Shah, and others, Defendants.

THIS suit was instituted on the 14th September 1846, to obtain possession of a gantee jumma in right of purchase, and recover mesne profits on account of the same. Suit laid at rupees 1435.

The plaint sets forth that Musst. Mohamya Dossea was the owner of a gantee jumma of rupees 288-11 in the villages of Raimanick and Kutchoa, pergunnah Eusuppoor Ameerabad. The jumma, being put up for sale in the collector's office for arrears of rent of 1238 B. S., was purchased, on the 20th June 1834, by Petumber Shah, by whom the purchase was transferred, on the 3rd December following, to the plaintiffs. They took formal possession, but were not able to collect their rents, the tenantry having been forbidden by the Paul Chowdrees, the defendants, to pay their rents to the plaintiffs. As they were thus virtually dispossessed, they now institute this suit after a lapse of 11 years, 8 months, 11 days from the alleged date of their dispossession, for the recovery of their rights.

Petumber Shah files an answer in support of the plaintiffs' statement.

The Paul Chowdrees, the zemindars, answer that Mohamya Dossea held no jumma of rupees 388-11, in the villages mentioned; but there was a gantee jumma in her name of rupees 1876, in the villages Kutchoa, Raimanick, Malunchee, and Bagurpara, of which villages Kalee Pershad Potdar held a putnee of 8 annas, and the other 8 annas were in the immediate charge of the zemindar of pergunnah Eusuppoor Ameerabad, Ishore Chunder Nundee. In 1239 the rights and interests of Kalee Potdar in the putnee in question were put up to sale, and bought by Neel Komul Paul Chowdree, the father of present defendant, Shree Gopal Paul Chowdree. Mohamya not paying her rents with regularity, Neel Komul attached her jote, and collected the rents of it himself. Subsequently the other 8 annas of Mohamya's gantee being exposed for sale for rent due to the zemindar the above said Nundee, Neel Komul bought it: thus he obtained possession of the entire gantee, and contends, besides advancing other pleas, that as neither the plaintiffs obtained possession nor Petumber Shah, from whom they purchased, the suit ought to be dismissed under the law of limitations.

The principal sudder ameen did so dismiss it at first; but being allowed by the judge, on his application, to review his judgment, he afterwards gave a counter decision in favor of the plaintiffs, decreeing their possession of Mohamya's alleged gantee in the two villages mentioned, and wasilat for 11 years, 8 months, 11 days.

JUDGMENT.

The first decision of the principal sudder ameen was decidedly sound, as being consonant to law and such as the facts of the case suggested.

The plaintiffs by their own showing were but a little more than three months within time.

This great delay is wholly unaccounted for, and goes far in the first stage to produce an unfavorable impression as to the goodness

and strength of their cause. But the date of their own purchase is not the date from which to reckon. The Paul Chowdrees assert, with great show of probability, that the gantee jumma in dispute was in their hands even in the time of Mohamya Dossea.

To meet this statement effectually, it was incumbent on the plaintiffs to show that their predecessor, Petumber Shah, from whose hands they purchased the gantee, was in actual possession before them. Of this fact they have only been able to produce a copy of a suspicious document from the collector's office, the original purporting to be a receipt in Petumber Shah's hand, acknowledging his having been put in possession of his purchase. Besides this paper, which is unauthenticated by the signature of the collector or other superior officer, dated 12 years, 1 month, and 28 days ago, and which was not produced till after the lower court's first decision; there is absolutely nothing to show that Petumber Shah entered into possession; which being wholly insufficient as proof of actual possession, (a point by no means difficult of proof had possession really taken place,) I am constrained to pronounce that it is not proved that either the plaintiff or Petumber succeeded in obtaining possession, and that the present suit is consequently barred by the lapse of time.

ORDERED,

That the appeal be decreed, with all costs against the respondents, whose suit is hereby dismissed under the statute of limitations.

THE 6TH JUNE 1840.

No. 19 of 1848.

Appeal against the decision of Rai Loknath Bose Bahadoor, second Principal Sudder Ameen of Jessore, dated 27th June 1848.

Hurnath Mozumdar, (Plaintiff,) Appellant,

versus

Lutteef Sirdar, Govind Chunder Mookerjee, Surroopnarain Dut, Neamut Mca, Dwarkanath, and Juggut Jai, and others, (Defendants,) Respondents.

THIS suit was instituted on the 5th June 1846, to reverse a sale of a jote jumma, in execution of a regular decree of court passed for arrears of rent, and to obtain possession of the said jote jumma in right of purchase, together with wasilat. Suit laid at rupees 4620-14-6.

It is necessary to state that the plaintiff brought an action on a former occasion with the object of obtaining possession of the jote mentioned in this suit, together with another jote in the same locality, which action embracing two distinct claims was therefore thrown out by an order of nonsuit. The plaintiff therefore brings this suit for one of the said jummas; and the particulars of his plaint

may be thus related. That Lutteef Sirdar, Neamut Kadir, and Futteh Mahomud were in joint possession, according to a decree of court, of a jote jumma in the village of Altapoor, of rupees 142. These parties sold the said jote to the plaintiff for 200 rupees, according to a deed of sale, dated 8th Bhadoon 1249, when they gave over their title deeds, &c. The plaintiff was accordingly in full and entire possession, and paid his rents with regularity to the izaradar on the part of the talookdar, and he also liquidated the amount of arrears of 1248, on account of the jote for which the izaradar had sued Lutteef in a summary action and obtained a decree. That notwithstanding all this, and the virtual recognition thereby of the plaintiff as the occupant of the jote, the izaradar again entered another action against Lutteef and his fellow sharers for the arrears of rent on account of 10 annas' demand for 1249, in prosecution of which Kadir, one of the sharers, was seized and conveyed before the collector, to whom he represented that his apprehension was unwarrantable, as, having in conjunction with his fellow sharers sold his jote to the plaintiff, he was not answerable any longer for the rents. The plaintiff, at the same time, presented a like petition, and one Surroopnarain also preferred a claim to the jote as purchaser. Proofs were called for from these claimants. Surroopnarain gave none; but the plaintiff filed his deed of purchase and other papers, when the collector dismissed the summary suit. While the summary suit was, however, going on, the izaradar and Surroop got up a pretended affray, when the jote in question was made the subject of enquiry under Act IV. 1840, the plaintiff being on one side and the izaradar and Surroop on the other. A third party, one Neamut Mca, also interposed with a claim, alleging that he was an owner by purchase of 4 annas of the jote in question. The criminal court, not being able satisfactorily to decide in whom, of the above parties, possession lay, ordered the attachment of the jote, and a suzawul was accordingly appointed to collect the rent. While the jote was under attachment in this way, the izaradar instituted a suit in the moonsiff's court of Tirmohonee against the said Lutteef and others, the original ryuts, to reverse the summary award above referred to. The plaintiff again urged his right and title to the jote; but Lutteef and his fellow sharers not appearing to defend the suit, the moonsiff passed an *ex parte* decree in the izaradar's favor, with a saving clause, however, that nothing contained in the judgment was to be taken as prejudicial to the rights of the plaintiff, who was at the same time referred to a regular suit to establish his title to the jote. The izaradar lost but little time in taking out execution of the decree in his favor, and caused the jote to be lotted and advertised for sale, when the plaintiff again urged his claim of purchase, and represented that the arrears for which the decree had been passed had long before been liquidated by the plaintiff, and that in no case could the jote be sold, as there was in the collector's

hands a large surplus sum, remitted out of the proceeds of the jote by the suzawul. Notwithstanding this, the moonsiff of Tirmohonce still ordered the sale, which accordingly took place through the collector of the district on the 8th January 1845, when Govind Chunder Mookerjea, ostensibly for himself, but really for Dwarkanath, the izaradar, purchased it for 1605 rupees. The plaintiff therefore brings this suit to reverse the sale under the orders of the Tirmohonce moonsiff, and to recover possession of the jote in question in right of his purchase, together with wasilat from the date of dispossession.

Dwarkanath, the izaradar, and Juggut Jai, the talookdar, file their answer together, in which they utterly deny the truth of the plaintiff's alleged purchase, and aver that all their deeds are fabricated and false. The claims of Surroopnarain and Neamut Mea, each for himself, are no better founded. When Kadir, they continue to say, was apprehended on the summary suit alluded to in the plaint, he at first confessed the arrear and executed a deed of compromise, which being filed with the suit, he was enlarged from jail. But the plaintiff, having soon afterwards bought him over to his side, made him file a petition, in which he denied having executed the compromise, and stated that he and his fellow sharers, Lutteef and others, had sold their jote to the plaintiff, on which representation the collector dismissed the summary suit. After this, the izaradar made a regular suit to contest the summary award which he gained, Lutteef and his fellow sharers, though they filed a vakalutnamah, giving no answer, or otherwise appearing in the suit. The plaintiff and Surroopnarain both offered their objections in that suit; but were not able to satisfy the court why the summary award should not be reversed. The plaintiff then appealed from the moonsiff's decision to the judge, in which he was again unsuccessful. The izaradar having also obtained a decree from the same moonsiff for the remaining 6 annas of the rents of 1249, took out execution of both decrees and caused the jote of Lutteef to be sold. That as to the alluded surplus sum in the collector's hands, that is an untruth, the fact being that the sum was very insignificant and quite insufficient to liquidate the decrees in the defendants' hands. That the defendants have denied, and do deny, the truth of the plaintiff's alleged purchase; but supposing even that should be granted, it would be of no avail to him, seeing that the jote having been sold for its own arrears, the rights of all parties in the jote prior to the sale became null and void.

Govind Chunder Mookerjea answers that he purchased the jote at public auction, and claims a right to be continued in his purchase.

Surroopnarain answers that he purchased the jote of Lutteef, and asserts that the claim of the plaintiff is altogether false.

Neamut Mea answers that he bought a 4 annas share in the jote in question from Lutteef and others.

The principal sudder ameen, after occupying a great portion of his decision in a detail of contradictory points in the evidence on the part of the plaintiff, declares that the purchase was not real; that the title deeds are false and fabricated; that the plaintiff never got possession, and was never recognised as the owner of the jote; and that the story of the sale was made up to save the jote from sale on account of the liabilities and debts of the real owners, the ryuts.

JUDGMENT.

The principal sudder ameen rejects the deed of sale filed by the plaintiff and every other document, as forged or prepared after the apparent dates on which they are said to have been written. Now he admits that the original ryuts, Lutteef and others, so early as when the first summary suit was instituted, were in league with the plaintiff. Such being admitted, why should he doubt the genuineness of the deed of sale produced? Without some such instrument they could not hope successfully to accomplish their designs. The very proof of collusion is proof presumptive of the deed of sale; and I have not a shadow of a doubt on my own mind that the sale did really take place. What the object may have been, is another question; but it seems to me needless to enter into it. That the two decrees for rent of 1249 were passed by the moonsiff of Tirmohonee, which both became absolute, one not having been appealed at all, the other having been upheld in appeal; that the arrear was not paid either by the defaulting ryuts, or by the plaintiff, the alleged purchaser; and that the jote was sold in satisfaction of the said decrees; are all undoubted points. Now I doubt much, in the first place, whether such a suit as that now before the court could properly or legally be entertained at all. The sale of the jote was made under regular decrees of court, and as there was no other way of satisfying those decrees but by the sale of the jote, the sale cannot be set aside without setting aside the decrees also. I am not aware that the civil court has power to annul a decree, passed in a regular suit, except on proof that the same was obtained through collusion. Be this, however, as it may, and allowing that the plaintiff was the real owner of the jote at the time the decrees were obtained for the rents of 1249, I am of opinion that his claim to recover possession is not tenable. Whether any balance of rent existed or not, is a point which it would be superfluous to question. The decrees proved that there was an arrear. The sale of the jote for its own arrears was not a sale of the rights and interests of its reputed owners, but a sale of the thing itself, so that whatever right or title the plaintiff, or any one else, held in the jote, was all extinguished at the sale. If the sale was legal, by which I mean if all the prescribed forms were duly observed, there is no power possessed by the civil court, that I am aware of, by which it can now be upset.

But the plaintiff has urged a plea against the legality of the sale, viz., that there was a sufficient sum, the accumulation of the surplus proceeds of the jote, in the hands of the collector, to liquidate the decrees of rent in the izaradar's favor, from which the decrees ought to have been satisfied, and the jote so saved from sale. Now leaving alone the question whether the collector had the power or the authority to pay away the current rents of the jote to satisfy the claims of former periods, and every other consideration connected with this matter, it is not shown that there was any such surplus, and the collector in a proceeding denied it. Under any circumstances it was the duty of the plaintiff, if he wished to preserve his alleged purchase, to pay up the arrears himself, and not risk his claims to the doubtful issue of an after suit such as he has now brought into court.

The order of the lower court dismissing the suit of the plaintiff, (though not on identical grounds,) is therefore upheld, and this appeal dismissed, with costs.

THE 7TH JUNE 1850. •

Case No. 18 of 1848.

Regular Appeal from the decision of Baboo Loknath Bose, second Principal Sudder Ameen of Jessore, dated 15th June 1848.

Raja Burdakant Roy, Defendant, Appellant in the suit of Kalleepersaud Ghuttuck and Gour Persaud Guttuck, Plaintiffs, Respondents,

versus

The Appellant, Ram Dhun, and others, Defendants.

THIS suit was instituted by the plaintiffs on the 7th April 1847, to reverse a summary award and a sale held in execution of the same, and to obtain a confirmation of their lease of the village of Assennugur on a yearly rent of rupees 157-10-17½.

The plaint sets forth that the entire village of Assennugur was the lakhiraj property of Hurchunder Ghose and others, who granted a perpetual lease of the same to the plaintiffs on a yearly rent of rupees 60. But on the resumption by Government of the estates of Hurchunder, and owing to the settlement made with him, this lease became null; but a fresh one was at the same time given him on a jumma of rupees 157-10-17½. The plaintiffs paid this rent to the lakhirajdars while they were in possession; but the Rajah Burdakant having obtained the mouroosee of Assennugur and all the other villages lately held by Hurchunder as lakhiraj, demanded from the plaintiffs the yearly rent of 334 rupees, instead of rupees 157-10-17½, which was the rent they had engaged with Hurchunder for. The plaintiffs not agreeing to the rajah's demand, he sued them

in a summary suit, got an *ex parte* decree, and caused the sale of the plaintiffs' tenure of Assennugur, when the defendants, Susseeboosun and Muddunmohun, purchased it for rupees 362. The plaintiffs now sue to reverse the summary award and the sale, and to recover possession of the village of Assennugur on the terms they held it prior to the sale, *i. e.*, on a perpetual lease at a yearly rent of rupees 157-10-17½.

Susseeboosun and Muddunmohun make answer that the sale of Assennugur was in every way legal, and as such cannot properly be reversed.

Rajah Burdakant, calling himself the mouroosedar of Assennugur, as well as of all the other late lakhiraj property of Hurchunder, answers to the same effect as Susseeboosun.

Ramdhun, who was not a defendant at first, but was made so, he having, while the suit was going on, purchased, under a decree of court, the rights and interests of Hurchunder in Assennugur and nine other villages lately held by him as lakhiraj, answers that the rajah's mouroosce and the perpetual lease of the plaintiffs are both equally false; in proof of which he makes the following statement. That Assennugur and nine other villages were given by an ancestor of the rajah, rent-free, to his relatives, Hurchunder and three others. On the resumption by Government of these ten villages, (of which Assennugur is one,) they were formed into one estate, of which the sudder jumma was fixed at rupees 536-15-4, and a settlement was made of the same with Hurchunder and his fellow sharers. Some time after this, an attachment was made of this newly created talook, in execution of a decree of the civil court passed in favor of one Hurkalee against Hurchunder and his fellow sharers. A dependant of the rajah, by name Ramdhun Ghose, then appeared and claimed the entire talook, which he said had been sold to him prior to attachment. The claim, however, was rejected, and a renewed order was passed for the sale of the talook. Two or three days prior to the sale the rajah himself objected to the sale, and put forth his claim to the talook in right of an alleged purchase; but the principal sudder ameen, considering that the rajah and the above said Ramdhun Ghose were one and the same party, and for various other reasons detailed in his order at the time, disallowed the objection, and recorded an order for the sale of the talook. It accordingly took place; but owing to an error in the advertisement, the sale was cancelled. On a re-sale, held on the 5th July 1847, the talook was purchased by the defendant Ramdhun, who now avers that the suit of the plaintiffs is a collusive one, brought by the rajah and Hurchunder to keep the estate in their own hands, and to prevent the defendant from reaping any advantage from his purchase of the rights and interests of the said Hurchunder.

The principal sudder ameen, on the conviction that there did exist a fraudulent compact between the plaintiffs, the rajah and

Hurchunder reversed the summary award, upset the sale, and declared both the plaintiffs' title and that of the rajah to be false and fraudulent. Thus deciding the case altogether as the defendant Ramdhun desired.

Against this extinction of his claim to the mouroosee of the property under litigation, the rajah appeals. He is silent, however, as to the reversal of the summary award and sale.

The plaintiffs, whom the rajah has made respondents, file a similar objection against the decision in respect to the rejection of their claim to hold the village of Assennugur on a perpetual lease at the jumma of rupees 157-10-17½. But their petition not being a regular appeal, and the question raised by them not being identical with that which the regular appellant, the rajah, has brought forward, it cannot now be entered into under the view given by the Sudder Court of their Construction No. 868.

The only point then with which the appellate court has to deal, is that raised by the rajah. On this point, I am of opinion that it was not necessary or proper for the lower court to pronounce any opinion favorable or otherwise, on the title to the village of Assennugur, set up by the rajah. The question before the principal sudder ameen simply concerned the tenure of the plaintiffs, and there was but one issue, to which he should have confined his enquiries which was this—were the plaintiffs really lease-holders or occupants of the lands in Assennugur at the jumma assigned by them, viz., rupees 157-10-17½? The decision of this point would have sufficed for the settlement of all the other pleas on the plaintiffs' side. If they could show no right to hold on this jumma, their suit to reverse the summary award, to cancel the sale, and obtain a judicial confirmation of their asserted rights, would of course fall to the ground: if, on the contrary, they were able to prove their occupancy of the lands on the alleged jumma, the summary decree and sale must have been set aside. There was no occasion, in considering this question, to enter at all into the title of any other parties who might be at issue regarding the right of collecting the rents. Whether that right lay in the rajah, or the defendant, Ramdhun, was of no consequence to the determination of the question of what might be the amount of a ryut's holding in the estate.

To pronounce therefore on the invalidity of the rajah's title in a suit of this nature, was going beyond the point; and I accordingly cancel that part of the decree of the lower court declaring that the mouroosee title to the village in dispute claimed by the rajah, appellant, is still an open question, unaffected by any thing in the judgment appealed from, which, in all other respects, stands as it was passed. The costs of the rajah in this appeal will be charged to the respondent, Ramdhun; and those of Susseboosun and others, the purchasers, will be charged to the rajah, appellant.

THE 8TH JUNE 1850.

No. 9 of 1850.

Appeal against the decision of Radhanath Chatterjea, Moonsiff of Comercolly, dated 8th December 1849.

Ram Ruttun Roy, (Defendant,) Appellant,

versus

Ram Mohun Sircar, (Plaintiff,) Respondent.

THE plaintiff sues to set aside a summary award of rent, and to obtain a refund of payment over and above his just rents, with as much again as damages. Suit laid at rupees 100-5-4.

The defendant, in answer, asserts that the summary suit was not for the rents of the jummas stated in the present petition of plaint, but for those of another distinct jumma held by the plaintiff in the village of Nagpara, the rent of which, claimable by the defendant as a nine annas proprietor of the pergunnah in which the said village is comprised, is 75 rupees, for which the defendant holds his kubooleut.

The moonsiff rejected the kubooleut, discredited the evidence in support of it, and decreed the claim.

JUDGMENT.

A local investigation was essential to clear up the point, whether the plaintiff held no other jote-jummas than those mentioned in his plaint. I remand the case for this purpose, and, considering the position of the parties, that the one is a poor man and the other a rich, I would recommend the moonsiff to visit the lands himself. The moonsiff will charge the costs of this appeal to the party against whom he may give judgment.

With respect to the plea urged by the appellant's vakeel, that the suit is inadmissible, as the stamp is not adequate to the real matter at issue, I have to observe, that this question, besides being of no import, cannot be decided until it is first ascertained whether the plaintiff has or has not the separate jumma said to be in his possession by the defendant. If he has not, then the stamp is sufficient to cover his claim as set forth in his plaint; and if he has, then the suit will have to be dismissed on weightier grounds than of the inadequacy of the stamp.

The value of the stamp for the appeal will be refunded in the usual manner.

THE 8TH JUNE 1850.

No. 10 of 1850.

Appeal against the decision of Radhanath Chatterjee, Moonsiff of Comercolly, dated 8th December 1849.

Radachurn Roy, (Defendant,) Appellant,

versus

Rammohun Sircar, (Plaintiff,) Respondent.

THIS suit is similar to the foregoing, the plaintiff being the same. The defendant is a 7 annas' sharer in Mahmudshai,—Ram Ruttun, in the other suit, being the proprietor of 9 annas. The question in the two suits being the same, and as the same order must ultimately govern both decisions, I remand this case also, desiring that the moonsiff will decide the case *de novo* after a local enquiry, and that he will charge the costs of this appeal to the party against whom he may give judgment.

A copy of the judgment in appeal in the suit No. 9 will be appended to the record of the present case, to render it complete in itself, and obviate the necessity of other reference. The value of the stamp for appeal will be refunded in the usual manner.

THE 8TH JUNE 1850.

No. 11 of 1850.

Appeal against the decision of Moulvee Sadick Ahmud, Moonsiff of Jenidah, dated 10th December 1849.

Raj Chunder, Ram Sunder, and Shisteedhur, Appellants in the suit of Beedoomohun, (Plaintiffs,) Respondents,

versus

The Appellants and Deep Chand, Defendants.

THE plaintiff sues the defendants on a joint bond executed by them on the 8th Srabun 1248 B. S., for 16 rupees, which, with interest thereon, now amounts to beegahs 30-14-2, the sum at which he lays his action.

The three defendants, named as appellants, answer and deny the bond *in toto*.

The moonsiff gave a decree against them, considering that the debt and the execution of the bond were fully proved.

JUDGMENT.

The three appellants came in and stated, in their answer, that Deep Chand, one of the parties sued, did not live with them, but had a separate house in another village, several coss off. But the moonsiff never had him served with a separate notice or issued an ishtehar for his appearance. This makes his proceedings incomplete and irregular, and I am in consequence constrained to cancel

his decision, and return the case in order that he may rectify his error and then decide the case *de novo*.

The value of the stamp for the appeal will be refunded in the usual manner.

THE 20TH JUNE 1850.

No. 1 of 1849.

Appeal against the decision of Rai Loknath Bose Bahadoor, second Principal Sudder Ameen of Jessore, dated the 29th December 1848.

Bykaunt Nath Chatterjee, (Plaintiff,) Appellant,

versus

Nusseema Beebee and others, (Defendants,) Respondents.

THE plaintiff sued the defendants to reverse a summary award of rent, and to obtain a judicial confirmation of his right to lot Mohindee as dur putneedar. Suit laid at rupees 2910-5-6½.

The principal sudder ameen dismissed the suit with costs.

The plaintiff appealed, but having adjusted his dispute with the defendants, both parties now file a deed of compromise, and desire that the case may be disposed of conformably thereto.

ORDERED,

That the decision of the lower court be cancelled, and the case be disposed of in conformity to the terms of the private arrangement made between the parties.

THE 21ST JUNE 1850.

Case No. 10 of 1846.

Review of Judgment passed by the Judge of Jessore in the suit of

Mr. R. Savi, Appellant,

versus

Persunnonath Roy and others, (Defendants,) Respondents.

THE case between the above parties was decided in appeal by Mr. James in favor of the appellant on the 10th July 1849, when certain lands, which formed the subject of the suit, were declared to belong to the village of Chookenuggur, of which the appellant held the putnee. But in the decretal order Ousgong, a village belonging to the defendants, was inadvertently written in place of Chooke-nuggur. Mr. James having applied for permission to rectify this error, and the same having been granted by the Sudder Court, I have this day taken up the case, and being satisfied, from the perusal of the decree, and Mr. James's letter to the Sudder, that the error was occasioned by inadvertence, and that it was clearly the intention of the presiding judge to decree the lands in dispute to the appellant, as those included in his putnee possession of Chookenuggur,

I decree accordingly, in amendment of that part of the decree of this court passed on the 10th July 1849, in which it was erroneously stated that the lands in question belonged to the village of Ousgong.

THE 21ST JUNE 1850.

No. 32 of 1848.

Appeal against the decision of Bgboo Loknath Bose Bahadoor, second Principal Sudder Ameen of Jessore, dated the 2nd September 1849.

Roop Chunder Sircar, (Defendant,) Appellant,

versus

Abbas and nine others, (Plaintiffs,) and Moonsoor Mahomed, (Defendant,) Respondents.

THIS suit was instituted by the plaintiffs to recover their share of a jumma in Kalabareah as heirs of Hedaiut Oollah, deceased, together with wasilat, and to reverse a summary award of rent and the sale of the jumma in consequence. Suit valued at rupees 730-8.

The principal defendant, Roop Chunder Sircar, did not appear till two days after the expiration of the term of the ishtehar, for which reason the principal sudder ameen refused to receive his answer to the plaint, and proceeding on an *ex parte* investigation, he at length gave the plaintiffs a decree.

The late judge, on a misapprehension of the meaning of the Circular Order, No. 141, of the 11th March 1841, denied the defendant the right of appeal in consequence of his default in the lower court, and dismissed his appeal without a hearing.

This order was reversed in special appeal by the Sudder, by whom the case (*vide* printed Decisions for March 30th, 1850) was remanded, in order that the appeal may be disposed of upon the consideration of any objections, which the appellant might raise to the plaintiffs' claim, as shown by the existing record.

JUDGMENT.

The case having come before me this day, I find, from the existing record, that the defendant made his appearance and desired to file his answer to the plaint long before any evidence had been heard in the case or any proofs had been filed by the plaintiff. Taking therefore as a precedent the decision of the Sudder, dated the 1st November 1849, in the case of Issur Chunder Gungolee, petitioner, I am furnished with a suitable judgment, by giving *verbatim* the Court's order in that case.

"It appears that the defendant (appellant) appeared in the court of first instance, after the expiration of the notice calling on him for his answer, and wished to file his answer, but he was not allowed. Now under Section 24, Regulation XXIII. 1814, as no evidence to the plaintiff's statement had been heard, he ought to have been

allowed to file his answer." The appeal is decreed on this ground, and the case remanded to be tried by the sudder ameen with reference to the above remarks.

I surmise that the Court in the case alluded to, based its opinion of the applicability of the Regulation quoted to the trial of the case by the principal sudder ameen, from the suit being one which might have been tried by the sudder ameen, as being under 1000 rupees. To the latter officer, Regulation XXIII. 1814 is applicable, but not to the principal sudder ameen, to whom the course of procedure is the same as that prescribed for zillah judges.

THE 26TH JUNE 1850.

No. 12 of 1849.

Appeal against the decision of Baboo Oopender Chunder Nyaruttun, Principal Sudder Ameen of Jessore, dated the 24th April 1849.

Kaleesunker Chowdree, and on his demise, Mahdub Chunder and Oboychunder Ckowdree, Appellants in the suit of Mr. Durand, Plaintiff, Respondent,

versus

The Appellant and others, Defendants.

THIS suit was instituted on the 27th July 1846, for possession of a farm, with mesne profits of the same from 22nd Kartikh 1248. Suit valued at rupees 564-1-9.

The plaintiff states Kaleesunker Chowdree gave him the lease of kismut Baragungle on a jumma of 41 rupees, for nine years, from the 22nd Kartikh 1248; but that the plaintiff has never been able to obtain possession. That, at the end of 1248, the plaintiff relinquished the lease, and satisfied a summary decree which the defendant obtained for the rents of the kismut. Being obliged to pay the rent, the plaintiff sued the defendant in the court of the moonsiff of Commercolly for possession of the farm, which suit was dismissed on default. The plaintiff now renews his claim, and institutes this suit before the principal sudder ameen, laying his action at rupees 594-1-9, being the value of the farm and the aggregate estimated profits for the whole period of the lease.

Kaleesunker admitted that he gave the plaintiff the farm, but affirms that he both obtained possession at the time and is still in possession. The suit, he further contends, ought to be dismissed, as the boundary of the land comprised in the farm has not been stated.

The principal sudder ameen deputed an officer to make enquiries on the spot, and decreed the suit in favor of the plaintiff mainly on his report.

JUDGMENT.

The defendant would have it believed that the plaintiff has had the assurance to institute this suit for possession of his farm while it was still in his occupation. Such shameless and audacious conduct is utterly incredible. Moreover, the evidence, adduced by the defendant before the local ameen to prove his improbable statement, was any thing but uniform or satisfactory. As regards the plea upon which the defendant claims to have the case nonsuited, it is sufficient to say that the lands are, in my opinion, adequately described. The decision of the lower court is accordingly confirmed, and this appeal dismissed, with costs.

THE 26TH JUNE 1850.

No 22 of 1849.

Appeal against the decision of Opendar Chunder Nyaruttun Bahadoor, Principal Sudder Ameen of Jessore, dated the 23rd July 1849.

Ram Ruttun Roy and Radachurn Roy, Appellants in the suit of
Messrs. Frith and Sandes, Plaintiffs, Respondents,

versus

The Appellants and others, Defendants.

THIS suit was instituted on the 12th January 1849, to recover the value of 58 head of cattle, plundered by the defendants. Action laid at 493 rupees.

The plaint sets forth that the cattle in question having, on the 5th February 1848, been turned loose, as usual, on the mydan of Malsha Khoonda to graze, were from thence taken and driven away by the servants and dependants of the defendants. The plaintiffs complained of this act of plunder at the time in the criminal court of the district, and the defendants' servants were punished. The present action is now brought to recover the value of the plundered cattle, deducting the value of two rescued by the exertions of the police.

The defendants, in answer, plead that there was no plunder committed, but that the cattle of certain ryuts were seized and attached on account of arrears of rent due to the defendants, by the Government sale ameen; among them were three head of cattle belonging to the plaintiffs, which, on the representation of their gomashita, were delivered up to them. That owing to previous illwill having existed between the parties, opportunity was taken from this affair to concoct a charge of plunder, which, the defendants will be able to show was altogether false.

The principal sudder ameen, considering the charge of plunder fully established, decreed the value of the cattle as laid in this suit.

JUDGMENT.

Having called for the original record of the case of plunder on the part of the respondents, I have every reason to believe the truth of that charge. Agreeing therefore with the lower court in its decision, I dismiss this appeal, with costs.

THE 27TH JUNE 1850.

No. 9 of 1847.

Appeal from the decision of Loknath Bose Bahadoor, second Principal Sudder Ameen of Jessore, dated the 2nd March 1848.

Zummetunnissa Khatoon and Budderunnissa Khatoon, representatives of Nusseema Beebee, (Plaintiffs,) Appellants,

versus

Anund Mohun Dutt and others, (Defendants,) Respondents.

THIS suit was instituted on the 15th May 1847, to recover from the defendant, Anund Mohun Dutt, the sum of rupees 44-4-12½, being the aggregate excess payments, over and above her share of the rents of a putnee talook called Joupoor, held in joint and equal shares by the plaintiffs and defendants, together with interest on the same. Action laid at rupees 699-5-16½.

Anund Mohun Dutt made answer that he paid his quota of the putnee rents in full, and that he holds dakhilas in proof of the same. He pleads in favor of a nonsuit, on the ground that the account filed by the plaintiffs is not in sufficient detail.

The principal sudder ameen dismissed the suit, remarking that the plaintiff had failed to afford sufficient proof of the alleged excess payments, and that it appeared from a report of the mohafiz of the trust estate, of which the putnee concerned is a component part, that the defendant had duly liquidated his share of the rents.

JUDGMENT.

The lower court, it appeared to me, had not taken proper measures to obtain the requisite proof from the plaintiffs. Having allowed them to obtain, at their request, authenticated copies of chalans from the collector's office, it appears from an account drawn up therefrom, in this office, in presence of the vakeels of both parties, that from 1244 to 1250, (both inclusive,) the payment made by the plaintiff over and above her half share of the putnee rents amounts to rupees 369-12-2¾. To this, together with interest on the same from the end of 1250, I consider her clearly entitled, and accordingly decree it, with costs in proportion, in reversal of the orders of the lower court. As to the report of the mohafz, that was clearly collusive. That the defendant was in arrears is plain from the fact that, at the end of 1249, the collector deprived him of the management of his half share in the putnee, owing to his default. It is

also evident that he was in arrears 700 rupees at the end of 1243. Moreover, had the defendant not kept back his rents, the plaintiff would not have been able to show any excess payments on her part. These facts belie the report of the mohafiz of the trust estate, and show that it was both false and collusive.

THE 29TH JUNE 1850.

No. 2 of 1850.

Appeal against the decision of Baboo Opendar Chunder Nyaruttun, Principal Sudder Ameen of Jessore, dated the 6th December 1849.

Mr. R. Watson, Ranee Soorja Monie Debea, and Kishore Lal Chowdree, Appellants in the suit of Ramruttun Roy and Rada Churn Roy, Plaintiffs, Respondents,

versus

The Appellants and Khistolal Bhoomee, Defendants.

THIS suit was instituted by the plaintiffs to reverse a summary award under Act IV. 1840, passed by the magistrate of Nuddea, and to recover possession of 150 beegahs of land called Boodgaree, contained within the village of Sonaie Kund, pergunnah Taragonea, zillah Jessore, together with the mesne profits of the same from 1249.

Mr. Watson answers that the story of the lands in this suit being called Boodgaree is pure invention, there being no land so designated any where near the locality of the disputed land. That the same is part of chur Bonanund Daare in zillah Nuddea, a resumed alluvial mehal, settled in farm for a term of years with Ranee Soorja Monee and Kishore Lal, and underlet by them to the defendant. That when the Act IV. case was pending, the magistrate of Nuddea himself went to the spot, and, after a personal inspection and careful enquiry, decided that the lands in question were part of chur Bonanund Daare, and were clearly within the boundary line of the Nuddea district as previously defined by the joint revenue authorities of the two zillahs of Nuddea and Jessore. On these grounds the magistrate maintained the defendant in possession.

The principal sudder ameen declared the lands not to be in Nuddea, and gave the suit in favor of the plaintiffs.

JUDGMENT.

I am surprised that an officer of the experience of the principal sudder ameen should be so ignorant of his duties as not to know that if land be claimed by the parties to a suit as appertaining to their respective districts, reference should be made to the Sudder Dewanny Adawlut to decide in which the trial is to be held. I reverse his order, and desire that he will follow this course now.

THE 29TH JUNE 1850.

No. 3 of 1850.

Appeal against the decision of Baboo Opendar Chunder Nyaruttun, Principal Sudder Ameen of Jessore, dated the 10th December 1849.

Moonshee Khillafut Hussein and Latafut Hussein, Appellants in the suit of Messrs. Frith and Sandes, Plaintiffs, Respondents,

versus

The Appellants and others, Defendants.

THIS is a suit to recover the value of 26 head of cattle, 23 ploughs, and 2 maunds of indigo seed, the property of the plaintiffs, forcibly and illegally carried off and kept by the defendants. Action laid at 412 rupees.

Moonshee Khillafut Hussein and Latafut Hussien, the two principal defendants, deny the charge of plunder, affirming that the same is brought out of retaliation for certain complaints that they made against the plaintiffs in the foudjaree, in which the plaintiffs' servants were fined and punished.

The lower court decided the suit in favor of the plaintiffs; and seeing no reason, after a perusal of the record and grounds of appeal, to question the justness or correctness of that decision, I hereby affirm it, dismissing this appeal, with costs.

ZILLAH MIDNAPORE.

PRESENT: W. LUKE, ESQ., JUDGE.

THE 3RD JUNE 1850.

No. 251 of 1849.

*Appeal from a decision of the Moonsiff of Nicasee, Syud Warris Ullee,
dated 29th August 1849.*

Lukhekaunt Nund, (Plaintiff,) Appellant,

versus

Damoodur Banerjea and others, (Defendants,) Respondents.

THE plaintiff sues for a bond debt, laid at rupees 138-8.

The defendants deny the claim *in toto*, and plead that they are unconnected with each other in business, and therefore it is very unlikely they would jointly borrow money from plaintiff; that the improbability of their doing so is strengthened by their position with the plaintiff, with whom they have been at feud for some time, as is apparent from the records of the civil and criminal courts.

The moonsiff observes that plaintiff, in support of his claim, has produced two witnesses as having certified the bond. One of these, however, swears he never attested it, and knows nothing of the transaction referred to: the other swears to having witnessed it; but his testimony alone, in the absence of all other proof, the moonsiff is of opinion, is not sufficient; and he dismisses the case accordingly.

In appeal, the plaintiff pleads that the witness Cossinath admitted, in the lower court, having witnessed the deed; but such is not the case. It is certainly extraordinary that the plaintiff should not have repudiated Cossinath's evidence when he found it to be so adverse to his claims; but he does not appear to have demurred to it in the lower court. Independently, however, of the flaw in the evidence of the witnesses, there are other grounds for believing the bond to be fictitious. The ink in which the bond and signatures of the defendants are written, is quite distinct from that in which the names of the witnesses are inscribed: the latter have beyond a doubt been added at a date different and subsequent to that of the deed. I see no reason to interfere with the decision of the lower court. The appeal is rejected, without serving a notice on the respondents.

THE 3RD JUNE 1850.

No. 257 of 1849.

*Appeal from a decision of the Moonsiff of Bugree, Sreenath Bhooya, dated
23rd October 1849.*

Kishen Mohun Bhutta, (Defendant,) Appellant,

versus

Nahir Mallee, (Plaintiff,) Respondent.

THIS is an action to recover, with interest, certain monies deposited to remove a distraint for rent, laid at Company's rupees 27-4-6.

The plaintiff states that he is a tenant of the defendant's, and rents of him 9 beegahs, 3 cottahs, 6 paos, in the estate of Murera. The said estate was resumed under the provisions of Regulation II. 1819, and, in the year 1846, it was measured and assessed by a deputy collector. The plaintiff's annual rental, agreeably with the jummaundee, was then fixed at Company's rupees 3-4-6 annually. The defendant was subsequently admitted to a settlement on a half jumma, and, being dissatisfied with the rates established by the deputy collector, proceeded to fix new ones, and, in furtherance of his views, under the provisions of Regulation V. 1812, distrained plaintiff's crops. Plaintiff, to save them from sale, deposited the amount for which he now sues.

The defendant, in reply, pleads in justification, that, on a settlement being made with him, he called on his tenants to enter into engagements for their lands, plaintiff amongst the number, and accordingly he, plaintiff, received a lease, and granted to defendant a kubooleut, or counterpart, in Bysakh 1253 Umlee, for 14 beegahs of land, 12 of which bore a rental of 15 rupees annually, and the other 2 beegahs were liable for half the produce. Plaintiff failing to pay his rents, defendant caused his crops to be distrained, when the plaintiff deposited the amount claimed.

The moonsiff altogether rejects the kubooleut, which he believes to be a fictitious document—first, because it does not tally with its copy given to the ameen, to whom application for distraint was made, there being a difference in the date; and secondly, because the evidence of the certifying witnesses is unworthy of credit; and, deeming that defendant fails to show that he has a claim on the plaintiff, gives a verdict for the latter.

In appeal, the defendant urges nothing to lead this court to interfere with the moonsiff's decision. The *onus probandi* in a suit of this nature rests with the defendant. His right to collect, at the rate he specifies, is founded on the kubooleut. This document, however, is entirely unsupported by evidence. No jummaundee or jumma-wasil-bakee papers are forthcoming, or other documents, to prove the extent of plaintiff's liability. The kubooleut itself is no doubt a fabrication, for the reasons the moonsiff assigns; and because it is

beyond probability that the plaintiff would have executed such a document, when at the very time he was possessed of a jumabundee bearing the seal and signature of the deputy collector, fixing his rent and the extent of the land under his cultivation. The defendant's object is evidently to enhance the rent without resorting to the courts to establish his right to do so. The appeal is rejected, without serving a notice on the respondent.

THE 4TH JUNE 1850.

No. 258 of 1849.

Appeal from a decision of the Moonsiff of Nimal, Mr. J. Snell, dated 24th October 1849.

Komollochun Geree, (Plaintiff,) Appellant,

versus

Cossinath Pandey and others, (Defendants,) Respondents.

THIS is an action for a bond debt, laid at rupees 127

The defendants deny the claim, and plead that the suit is entirely based on vindictiveness and fraud; that the true motive which influenced plaintiff in this action, is the following. Plaintiff's house was robbed, and his suspicions fell on the defendants; he caused their houses to be searched; but having acted without the authority of the darogah or the magistrate, the defendants petitioned the latter, when plaintiff filed this counterclaim. By mutual agreement both suits were subsequently withdrawn; but plaintiff has again revived his (the present suit) on the plea that a balance of 35 rupees still remains due on the bond. •

The moonsiff discredits the bond—first, because it is evident from the records that the parties have long been at enmity; secondly, because Bhugowan Geree, the endorsee of the stamp paper on which the bond is engrossed, swears he sold it to one Mohun Belra, who again sold it to the plaintiff in the month of Bhadoon 1255 Umlee, from which it is clear that the bond was not drawn out till subsequent to that period, or two years after it is dated; and, as the petition of plaintiff was filed after that of defendants presented in the criminal court, the inference is justified that the preparation of the bond was simultaneous with that of plaintiff's petition. The moonsiff further observes that the signature of the defendant Cossinath does not tally with that on any other of the documents he has filed, and that he (moonsiff) consequently does not believe the latter to be his, and dismisses the case. •

In appeal, the plaintiff urges nothing to lead this court to interfere with the moonsiff's decision. From a careful consideration of all the facts elicited in the case, I have no doubt that the claim is fraudulent and malicious. The appeal is rejected, without serving a notice on the respondents.

THE 4TH JUNE 1850.

No. 259 of 1848.

Appeal from a decision of the Moonsiff of Midnapore, Gungagobind Udhicarry, dated 30th October 1849.

Ram Govind Singh, (Plaintiff,) Appellant,

*versus*Puddobuttee, wife of Nobin Mundul, and Sheikh Ruffee, and others,
(Defendants,) Respondents.

THE plaintiff sues for a bond debt, laid at rupees 147-12.

The defendant Sheikh Ruffee denies the claim, and pleads that he is at issue with his talookdar, Ramessur Banerjea, who sued him summarily for a balance of rent and obtained a decree. To reverse this decision, defendant instituted a regular suit in the moonsiff's court at Pertabpore, which terminated in his favor; and in a spirit of revenge and disappointment Ramessur Banerjea has preferred the claim under a fictitious name. The moonsiff referred the case to arbitrators under the provisions of Regulation XVI. 1793, and decrees according to the opinion recorded by the arbitrators.

In appeal, the plaintiff takes exception to the mode in which the arbitrators have conducted their proceedings and recorded their judgment. It appears from the records that, before any decision had been come to by the arbitrators, two of their number forwarded the case to the moonsiff, intimating that want of leisure prevented their finally disposing of it. On this plaintiff petitioned the court that it would decide the suit; but the moonsiff, refusing the request, sent back the case again to the arbitrators, two of whom ultimately recorded their judgment, the other two merely expressing their concurrence in what their colleagues had written. After the case had been returned in the first instance to the moonsiff, and plaintiff had expressed a want of confidence in the arbitrators and a wish that the moonsiff should himself try the case, he, (the moonsiff,) in the spirit of Section 7 of the law before quoted, should have complied with plaintiff's prayer.

I therefore admit the appeal, and remand the case to the moonsiff to be tried on its merits. The cost of stamp to be refunded.

THE 6TH JUNE 1850.

No. 263 of 1849.

Appeal from a decision of the Moonsiff of Pertabpore, Goolam Soobhan, dated 30th October 1849.

Ramhuree Pundah, (Plaintiff,) Appellant,

versus

Sreemunt Chuckerbutty, (Defendant,) Respondent.

THE plaintiff sues to recover 54 rupees, 7 annas, 15 gundas, on a bond, in which defendant pledged 2 beegahs, 2 cottahs of lakhiraj land as security for payment.

The defendant denies the cause of action, and pleads that the plaintiff is the creature of one Poornanund, with whom he, defendant, is at enmity, and who is in reality the prosecutor.

The moonsiff observes that the bond bears all the appearance of having been recently drafted, though it is dated as far back as 1250 Umlee; that the stamp on which it is written is indorsed three months prior to the execution of the deed, in the name of plaintiff's brother; that the testimony of the subscribing witnesses is not only conflicting and contradictory, but bears all the appearance of being tutored; that these circumstances combined throw considerable doubt on the bond and on the truth of plaintiff's claim, which lead the moonsiff to reject it.

In appeal, the plaintiff urges nothing to induce this court to differ in opinion with that above recorded. The validity of the bond rests entirely on the value to be placed on the evidence of the attesting witnesses. It is, as the lower court observes, contradictory and improbable, and unworthy of credit. The appeal is rejected, without serving a notice on the respondent.

The moonsiff has recorded his judgment without due regard to Act XII. 1843. His attention will be called to the omission.

THE 11TH JUNE 1850.

No. 102 of 1850.

*Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq.,
dated 14th March 1850.*

Joy Gobind Dutt and others, (Plaintiffs,) Appellants,

versus

Ram Mohun Mytee and Goluck Chunder Dutt, (Defendants,) Respondents.

THIS is an action for a bond debt, laid at rupees 1452-2-2.

It appears that the plaintiff and the defendant, Goluck Chunder Dutt, formerly lived in commensality; but causes leading to their separation, a division of their property, real and personal, took place. The bond, on which the present suit has been brought, fell to the share of plaintiff, who has made Goluck Chunder Dutt a party to the suit, to afford him an opportunity of confirming or disputing the truth of the bond. The defendant, Ram Mohun Mytee, denies the cause of action, and pleads that he had some pecuniary transactions with the defendant, Goluck Chunder, and deposited with him in Chyde 1242 Company's rupees 887.

The principal sudder ameen observes: "We have no doubt whatever that the bond, which forms the present ground of action, is genuine, nor that the defendant, Ram Mohun Mytee, received the con-

tents, Company's rupees 751; but every doubt that the two witnesses adduced to prove it ever saw it executed, or the money received by the obligor, as sworn by them, as it is evident their names were attached to the bond at a subsequent date. We cannot credit evidence, even on oath, that is opposed to the evidence of our senses. If then the testimony of the witnesses aforesaid be rejected, then neither the execution of the bond nor the receipt of the money is proven as required by Regulation XV. 1793. To accept it under the conviction of its untruthfulness would be to offer a premium to fraud and chicanery. Since then the plaintiff has adopted wrong means to obtain his due, that is to say, he has had recourse to subornation of perjury to prove defendant's bond, he has only himself to thank for not getting his due; and we dismiss the claim."

In appeal, the defendant pleads that the principal sudder ameen's argument is based on false premises; that the evidence of the witness Radhakishto, the writer of the bond, proves that the two witnesses whose evidence is rejected in the lower court attested the bond in his presence, and on the date it bears; and that such direct testimony cannot be set aside on a mere surmise. Plaintiff further argues that, admitting the evidence of the said two witnesses is not trustworthy, there still remains abundant proof of the truth of his bond, of which the principal sudder ameen has taken no notice whatever. The plaintiff produced two witnesses to prove his bond, who swear they attested it fifteen years ago. Their evidence was, I think, very properly rejected, as, from an inspection of the bond, notwithstanding the process it has undergone in its transit to this court with a view to destroy the suspicious appearances to which the lower court alludes, there can be no question that the names of the two aforesaid witnesses were added some time subsequent to the execution of the bond. The witnesses' testimony, moreover, is full of improbabilities, as they relate minute events as having occurred fifteen years ago with a degree of accuracy as if they had happened yesterday. Again, these witnesses are tenants of the plaintiff, and live at some distance from the place where they say the bond was executed. The evidence of Radhakishto can have no weight in removing the suspicion of the other witnesses, as he is a mookhtear in plaintiff's employ, and therefore an interested party, and though formerly employed by the defendant, has been at issue with him for the last three years. It appears also that, although included in the list of witnesses filed by plaintiff, he was never cited till a subsequent stage in the proceedings, long after the other two witnesses had given their evidence. The plaintiff lays stress on the evidence being conclusive, without that of the witnesses rejected. This argument might hold good if the names of the fictitious witnesses had been added without the consent and knowledge of the plaintiff; but there is reason to believe that the addition to the bond of the witnesses' names was the deliberate act of the plaintiff, and that he

tampered with the omala of the lower court to connive at the disappearance of the bond, which, when discovered after the lapse of twenty days, was found to have been disfigured, as if dipped in water, with a view no doubt to change the character of the writing, on which the lower court had based its decision. I therefore see no reason to disturb the principal sudder ameen's decision, which is hereby affirmed, and the appeal dismissed, without serving a notice on respondent.

THE 11TH JUNE 1850.

No. 267 of 1849.

Appeal from a decision of the Moonsiff of Bugree, Sreenath Bhooya, dated 2nd November 1849.

Bama Soondree and others, (Plaintiffs,) Appellants,
versus

Ballubee Lall and others, (Defendants,) Respondents.

THIS is an action for possession of 6 beegahs, 9 cottahs, 1 pao of land, with mesne profits.

The plaint sets forth that the deputy collector has resumed, measured, and settled the land above mentioned as belonging to plaintiffs' permanently assessed estate, as part and parcel of the resumed lakhiraj village of Sham Bazar. The moonsiff, on the ground of non-jurisdiction, refuses to entertain the suit, and dismisses it.

The plaintiff, in appeal, demurs to the proceedings of the lower court as informal, inasmuch as the usual itlanamah was not served on the opposite party, and pleads other points which it is not requisite to refer to at present. It appears that the moonsiff, when the plaint was filed, directed the service of the usual itlanamah; but before its issue from his court, he called on the case and dismissed it, quoting the precedent laid down in Construction No. 999. The precedent quoted is not analogous. It refers to two suits in which the cause of action was the same; and the other instance, to which the moonsiff alludes, was a summary suit for rent, in which the question of right was not involved at all, and can therefore have nothing to do with the suit under consideration. The moonsiff has omitted to adhere to the form prescribed in Regulation XXIII. 1814, Section 17, and his proceedings are therefore irregular.

The appeal is admitted, and the case remanded to be decided according to the forms laid down by the regulations.

The institution fee to be refunded.

THE 13TH JUNE 1850.

No. 8 of 1850.

Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 12th December 1849.

Sonatun Paul and others, (Plaintiffs,) Appellants,

versus

Hureechurn Mytee, (Defendant,) Respondent.

THIS is an action for a bond debt, laid at rupees 386-2-1.

The defendant denies the cause of action, pleads, the general issue, and that vindictive motives have instigated plaintiffs to file the suit.

The principal sudder ameen thus records his judgment: "The bond is supported by the evidence of three persons, but only two of them are witnesses to the bond, and these are illiterate and low caste, and no faith can be placed in their evidence. The alleged writer, Gungaram Paul, not being a subscribing witness, is not a whit more trustworthy. Moreover, we find that the bond was given to plaintiff's father nearly 12 years before this action is brought; and the obligor promised to pay the amount with interest three months after date. Now there is no cause assigned why the deceased obligee never took any measures to realize the amount. By copy of a plaint filed to-day by defendant, wherein the obligee's brother sues present plaintiff and others for his share of the deceased's estate, we find a schedule of the goods and chattels, but no mention of the bond now under consideration. Here then is strong presumption against its validity; and the circumstance of plaintiffs not being able to produce their books, which by this same plaint we find exist, is suspicious. Therefore, for the above reasons, considering the bond not satisfactorily proven, we dismiss the action."

In appeal, the plaintiffs argue that there are no grounds for repudiating the attesting witnesses. Their testimony, however, exceeds all probability. They depose to circumstances as having occurred eleven years and some months ago with the same minuteness and accuracy as if they had taken place this very day; and the statement of each witness is so similarly consistent in all its details, that it is impossible to avoid the inference that they have all been tutored. Another strong point against the truth of the bond is that it stipulates to pay *Sicca* rupees. The circulation of the *Sicca* currency ceased, and was no longer a legal tender in 1835. It is unlikely therefore that the plaintiff, who is a mahajun, should have received a bond for *Sicca* rupees in June 1836, without converting the amount into Company's rupees.

I see no reason to disturb the decision of the lower court, which is affirmed, and the appeal dismissed.

THE 13TH JUNE 1850.

No. 15 of 1850.

*Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq.,
dated 14th December 1849.*

Bhagbut Churn Ghose and others, (Defendants,) Appellants,

versus

Holodhur Ghose, (Plaintiff,) Respondent.

THE plaintiff sues for possession of 60 beegahs of dewuttur land in virtue of a grant made in favor of his ancestor, and states that he was ousted by the defendants in the year 1244 Umlee.

Defendants, in reply, demur on a point of law that the suit is barred by the statute of limitation, and plead that plaintiff never was in possession. The principal sudder ameen records his opinion that defendants have failed to prove their right though they acknowledge the fact of possession, and, considering that plaintiff has made good his title, gives a verdict accordingly.

In appeal, the defendants aver that the lower court has not in any way disposed of their demurrer as to limitation, and urge the same pleas as below.

From the records it would appear that the lower court, in its preliminary investigation under Section 10, Regulation XXVI. 1814, summoned witnesses as to the fact of plaintiff's possession, but omitted to record its opinion on the evidence, or whether jurisdiction was or was not barred by lapse of time. The principal sudder ameen's inquiry, in the first instance, should have been restricted to this point, and, until disposed of, the merits of the case should not have been entered into.

The appeal is admitted, and the suit remanded, with a view to the court below proceeding in the manner indicated in the Circular Orders of the Sudder Dowanny Adawlut, dated 13th September 1843. The institution fee to be refunded.

THE 18TH JUNE 1850.

No. 25 of 1850.

Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 20th December 1849.

Debee Sirdar and others, (Defendants,) Appellants,

versus

Hurcoomar Takore, (Plaintiff,) Respondent.

THIS is an action to establish a right to collect peshkush, or quit rent, and to recover arrears due on that account from 1251 Umlee to date of action, with interest, laid at Company's rupees 1506.

The Government was originally made a party to the suit. From the records it would appear, however, that the collector was enjoined not to defend it; but the magistrate, on his own responsibility, filed a reply in support of the pleas offered by the other defendants.

The principal defendants Debee Sirdar and Oorjon Doss, in reply, demurred on points of law: 1st, that the issue involved in the plaint was one of possession, and that the suit was barred by the statute of limitation; 2ndly, that the lands paying quit rent, or peshkush, form one joint, entire estate, and that a suit for possession must comprise the entire mahal, and that a claim to a fractional portion, with a view to sue hereafter for other portions, is not cognizable; 3rdly, that a suit brought by plaintiff's predecessor, involving the same issues as the present, having been dismissed by the moonsiff, and no appeal preferred from his decision, his decree is absolute and final. The defendants further plead that the lands they hold are jageer chakaran, in lieu of services rendered by them to the State; that the said lands are separate and distinct from plaintiff's maulgoozaree land, are not included in his tahood, and formed no part of the estate at the permanent settlement, and that heretofore they (defendants) have never paid rent in any shape.

The principal sudder ameen thus records his judgment: "On perusal of copy of a judgment of the court below, filed by plaintiff, we find that he sued these same parties for peshkush, and that his suit was dismissed, not on its merits, but on the grounds that, as the former malik-i-jumeen had, in conformity with the magistrate's order, refrained from levying from defendants peshkush, he could not do so until he had brought an action against Government for the right to do so. Thus the dismissal aforesaid is tantamount to a nonsuit, and is no bar to the cognizance of the present claim. In support of the affirmation of this issue, plaintiff has adduced copies of the dowlbundobust papers, dated 1797 A. D., or 1207 B. AE., and the collector's roobukaree, dated 11th July 1845, showing that the chakaran and deegwarry lands were included in the maul land's kuboolutee from defendants to former zemindars, dated in 1221, agreeing to pay rupees 127 per annum, as peshkush, for the beegahs 144-10 held by them, and jumma-wasil-bakee papers from 1213 to 1222, duly proved by the court below, as establishing indubitably the payment of peshkush by defendants to former proprietors. Indeed the prohibitory purwannah from the magistrate to the former zemindars dated in 1816, filed by defendants, is proof positive that they collected peshkush; and the circumstance of their having refrained from collecting it after receipt of order does not prove that they had no right to do so, nor give defendants the right to hold their lands rent-free."

The principal sudder ameen proceeds to state that the exhibits filed by defendants, viz., copy of a letter from the collector to the

Sudder Board, and a copy of a statement of the gross collections of the estate, dated 1795, does not bear on the question, nor rebuts the plaintiff's claim, as a new settlement was made with him in 1207; and, considering that plaintiff has fully and satisfactorily proved the payment of peshkush by defendants to the former proprietors, and consequently his right to the same, he, the principal sudder ameen, gives a verdict for the whole amount sued for, viz., Company's rupees 890,13 annas, with interest and costs.

In appeal, the defendants Debee Sirdar and Oorjon Doss urge the same pleas as in the lower court. They maintain that the real cause of action is *right of possession*; that a suit on such grounds is barred by lapse of time. This objection was overruled very properly in the lower court in its preliminary inquiry. If the issue were whether the land be mauul or lakhiraj, the "*onus probandi*" would rest entirely with the defendants, who have no title deeds, or documents of any kind, in support of their claim. The point for adjudication in reality is, whether plaintiff has or has not right to assess and collect peshkush, or quit-rent, from the defendants. Plaintiff obtained possession of melial Kootubpore, in right of private transfer in 1251 Umlec, from which date he demands rent at the same rate as levied by his predecessor. A right such as that now pleaded has been frequently recognized by the superior court, by whom it has been ruled that a claim to assess, being a perpetually recurring cause of action, cannot be barred by lapse of time; and we have therefore no doubt that the plaintiff was fully justified in bringing this action. The plaintiff's exhibits establish that the defendants paid an annual quit-rent to plaintiff's predecessor of 1 rupee per beegah on 127 beegahs, and, as the defendants can adduce nothing to invalidate his evidence, I see no reason to interfere with the lower court's decision in regard to one portion of the claim. The principal sudder ameen has, however, included in his decree the whole 144 beegahs, 10 cottahs of land, though the plaint and the exhibits show that the quantity of land actually liable for peshkush is 127 only, and that the remaining 17 beegahs, 10 cottahs have been surreptitiously usurped by defendants. The defendants do not deny possession of 144 beegahs; but there is no proof on record of the rate for which the 17 beegahs, 10 cottahs, are liable; nor has the lower court taken measures to ascertain the point. I therefore admit the appeal, and remand the case to the principal sudder ameen, that he may depute an officer to ascertain of what quantity of land, in excess of the 127 beegahs aforesaid, the defendants are in possession, and for what amount of rent of the said 17 beegahs, 10 cottahs, they are responsible, with reference to the rates of similar lands prevailing in the pergunnah.

THE 20TH JUNE 1850.

No. 39 of 1849.

Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 3rd January 1850.

Madhub Chunder Mijoomdar, (Defendant,) Appellant,

versus

Messrs. J. and R. Watson, (Plaintiffs,) Respondents.

THE plaintiff sues for a book debt, with interest, laid at rupees 671-1-9.

The defendant was a gomashtha in one of the plaintiffs' silk factories. When he left their service in 1833 there was a balance against his name in the accounts for advances for silk, &c., amounting to rupees 454, 7 annas, 11 pie, which plaintiffs could not recover without resorting to the present suit. Defendant denies his liability, and pleads that he was not responsible for advances made to the silk growers; and secondly, that he had adjusted the several items, of which plaintiffs' claim was composed, and that the plaintiffs were indebted to him Company's rupees 120, for expenses that had been incurred in collecting outstanding balances.

The principal sudder ameen observes: "In support of their claim plaintiffs have adduced an agreement and a balance sheet, both acknowledged by defendant. By the first, we perceive that defendant covenants to be answerable for advances made to ryuts, or rearers of silk-worms: therefore his first plea falls to the ground. By the second, we find that defendant is indebted to plaintiffs the sum of rupees 454-7-11. Now the *onus* falls on defendant to show how he has satisfied that debt; for which purpose he has filed two dakhillas or receipts, —one for rupees 50, and the other for rupees 125 and 13 seers 3 paos of silk, valued at rupees 72-11-7; but the aforesaid dakhillas are not satisfactorily proven to have been received from plaintiffs' kurpurdauze, or head gomashtha, as alleged. The evidence in support of them is conflicting." The principal sudder ameen proceeds to point out where the discrepancies and contradictions exist, and concludes: "Receipts supported by such evidence are worse than nothing; neither is there a particle of proof to show that defendant has been saddled with a former gomashtha's debts. Therefore by defendant's own admission and acts he is liable for the principal now claimed, and we therefore decree for rupees 454-7-11.

In appeal, the defendant repeats the pleas urged in the lower court. The balance sheet filed by plaintiff, is admitted by defendant to be correct. The issue to be tried then is, whether the balance, viz., rupees 454-7-11, has been liquidated in the manner stated by defendant or not. The two dakhillas or receipts, one for 50, the other for 125 rupees and 13 seers 3 paos of silk, are, from their appearance, fictitious. They do not, though stated by defendant they do, bear the

signature of the European manager of the factory; and the witnesses, who certify them, are unworthy of credit. They swear to facts of eleven years' standing, with a clearness and accuracy of memory that could not possibly have served them had they even witnessed the said facts a few days ago; and their evidence is, as pointed out by the lower court, otherwise contradictory. The two items in the rokur, (filed by defendant in proof of his payment,) Company's rupees 60, and 13-4-6, are no evidence that they form part and portion of the balance exhibited in the plaintiffs' balance sheet; nor is there evidence to show that the rokur, or daily filed, pertains to plaintiffs' factory. If it really be the plaintiffs' daily, how did it come into defendant's possession? Lastly. There is no proof adduced by defendant that his predecessor is liable for Company's rupees 69-4, of the claim preferred against him (defendant.) On the contrary the deed of agreement, which defendant acknowledges, stipulates that he, defendant, would be responsible for all outstanding balances; and it is quite obvious that defendant would never have been a party to such an agreement, without examining the accounts and satisfying himself of the nature of the contract he was entering into. The appellant altogether fails to prove that he has paid any portion of the plaintiffs' claim, for which he is indubitably liable, and I therefore see no reason to interfere with the decision of the lower court.

The appeal is dismissed, without serving a notice on the respondents.

THE 20TH JUNE 1850.

No. 48 of 1850.

Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 16th January 1850.

Núbo Kishore Doss Udhicarry, (Plaintiff,) Appellant,

versus

Krishto and another, (Defendants,) Respondents.

THIS is an action for possession of beegahs 17 of dewuttur land, and arrears of rent, with interest, from the year 1251 to 1254 Umlee, laid at Company's rupees 1159-14-15.

The plaint sets forth that the land aforesaid was acquired by plaintiff's ancestor, Khalaram Doss: that defendant's father, Sookmoy Doss, took a lease of it from Madury Doss, Khalaram's brother, in 1201 Umlee, at an annual jumma of Company's rupees 27, 4 annas; that in the year 1237 Umlee the defendants gave him (plaintiff) a kuboolout, agreeably with which they paid their rents till 1251, when they withheld them, and in 1253 Umlee ousted him of the lands altogether.

The defendants deny the cause of action, and plead the disputed land was originally acquired by one Jadub Ram Doss, their father's

chief gooroo, who raised the Thakoor Gokool Beharee, and dedicated the land aforesaid to its service. They further deny plaintiff or his ancestors ever had possession; and that since their title has never been disputed for 18 or 19 years, the period they (defendants) have been in possession, the present claim is barred by the statute of limitation.

The principal sudder ameen remarks: "In support of this claim plaintiff adduces two sunnuds and two kubooleuts,—the latter purporting to have been given by their father and themselves to Madury Doss aforesaid and to plaintiffs. The kubooleut, dated in 1237 Umlee is supported by three witnesses; but it is not satisfactorily proved to have been executed by defendants. The witnesses could not swear to it; and its authenticity is rendered more than doubtful by duly attested copies of a plaint filed before the collector, which states the kubooleut to have been given in 1237, 13th Assar, and a petition to the same authority, objecting to the registration of defendants' names as proprietors of the said lands, wherein the date of the said kubooleut is stated 17th Chyte. Moreover, there is not a particle of proof that defendants, either before or after the date thereof, ever paid plaintiff a single cowree of rent; and by his (plaintiff's) own showing, they have been in possession since 1201 Umlee. Thus this action is clearly barred by the statute of limitation."

On a review of the proceedings, and with due regard to what has been urged in appeal, I see no reason to interfere with the decision of the lower court. The suit is barred beyond all doubt by lapse of time. The appeal is accordingly rejected, without serving a notice on respondents.

THE 27TH JUNE 1850.

No. 255 of 1849.

Appeal from a decision of the Moonsiff of Midnapore, Gunga Gobind Surbudhikaree.

Sheikh Hingun, (Plaintiff,) Appellant,

versus

Mussts. Seernee, Sumlah, and Khujeena, wife and daughters of Yosoof Yahooodee, (Defendants,) Respondents.

THIS is an action for a bond debt, laid at Company's rupees 26-8. The bond bears date the 29th Chyte 1255 Umlee.

The defendants allow judgment to go by default.

The moonsiff observes that the issues in this case are, first, whether defendants' pleas, as recorded in case No. 261, which pleas must be assumed to have been filed in the present suit, are sound or not; and secondly, whether the bond is a true and valid document or not. On

the first issue, the moonsiff records that there are strong reasons for believing that the defendant Khujeena and her co-defendants are the victims of appellant's malignity, because the said "Khujeena" resisted all plaintiff's solicitations to become his mistress. The grounds for his belief, the moonsiff states, are that, in two suits now pending, No. 261 and No. 70, appellant's servants and appellant's partner are the plaintiffs, and seek to recover two loans on bonds stated to have been executed, whilst two suits, in which the present plaintiff *versus* the same defendants, were pending; arguing, therefore, that it is beyond probability that such loans, under the circumstances, would have been granted: further, that the testimony of the witnesses attesting the bond is not trustworthy, and at variance with the statement of Niamut-oolla, one of the plaintiffs, who declares that this suit has been instituted without his knowledge and sanction: and lastly, that the plaintiff can produce no khattas or rokurs in proof that the loans were ever made to defendants: and, considering that the claim is not only fictitious, but altogether based in fraud, he gives a verdict for the defendants.

In appeal, the plaintiff, Hingun Sowdaghur, demurs to the moonsiff's reasoning as inconclusive and contrary to evidence. It appears from the records of the case that the bond in the present suit (as the terms of the bond clearly indicate) originated in two former loans, for which the defendants had given two separate bonds, and for the recovery of which the appellant had instituted two suits, one in April and one in June 1848. The first was withdrawn, and the second struck off in default of plaintiff. These transactions are set forth in the bond under review. There is no attempt on the part of the plaintiff to mystify or conceal the circumstances under which the loan was made. Had the claim been fictitious, and plaintiff's motive in suing malicious, he might and would no doubt have framed a bond to suit his views, trusting to his witnesses to prove it; but in the present case the transaction that occurred between the parties are fully related, and references made to proceedings that had previously taken place in the courts in support of their truth. The attesting witnesses, among whom is the writer of the bond, certify the bond and the payment of the money to defendants; the stamp paper is endorsed on the very day the bond was executed; the signatures of the defendants correspond with those in the wukalut-namahs and replies filed by them in other suits, especially that of the defendant Khujeena, which is peculiar, consisting of three Arabic or Hebrew letters, (probably the latter, as she is a Jewess); and lastly, the defendants permitting judgment to go by default, not only in this but the other suits alluded to in the bond, are all circumstances tending to corroborate the validity of plaintiff's claims. The moonsiff has argued upon issues not on record. He has no authority to assume that the facts averred by the defendant Khujeena in another

suit instituted some time subsequent to the present, have likewise been averred in this case, in which judgment is allowed to go by default. Such a proceeding is altogether opposed to the spirit of Section 10, Regulation XXIV. 1814. He has recorded issues on fact, and admitted oral explanation in elucidation of them, when the said issues do not arise out of the pleadings at all. He attributes motives, and draws inferences, altogether unwarranted, and unsupported either by the pleadings or the evidence. Again, there is nothing on record to prove the appellant's connection with the plaintiffs in case No. 261, nor that they are his creatures. On the contrary the cases quoted, which have come before the court this day, involve claims totally distinct from that of the plaintiff; and one of them has been established on its own merits. The denial of Niamutoollah that he is a party to the present suit, and of all knowledge of the bond, should not be allowed to prejudice the plaintiff's claim. Niamutoollah's word is not trustworthy on oath, as in one place he says the suit was brought with his sanction, and in another he declares ignorance of both the bond and the suit. His motive in making these conflicting statements is to injure the plaintiff, with whom he has had a quarrel since this suit was instituted, which has terminated in a dissolution of partnership which existed between him and the plaintiff. I cannot therefore agree with the moonsiff in thinking that the present claim is either vexatious or untrue. The *bond* is beyond a doubt a *bonâ fide* document. With the motive that prompted plaintiff to institute a suit to recover upon it, the court has nothing whatever to do.

The appeal is decreed with costs, and the decision of the lower court reversed.

THE 27TH, JUNE 1850.

No. 261 of 1849.

*Appeal from a decision of the Moonsiff of Midnapore, Gunga Gobind
Surbudhikaree.*

Muthoor Mohun Sircar, (Plaintiff,) Appellant,
versus

Mussts. Scernec and Khujeena, (Defendants,) Respondents.

THIS is an action for a bond debt, laid at Company's rupees 22-8.

The plaint sets forth that whilst the defendants occupied a house in Colonelgunge in the town of Midnapore, they borrowed the money aforesaid to pay their landlord his house-rent, and to meet their own personal expenses, and executed a bond for the same on the 19th Sawun 1255, corresponding with the 1st August 1848; that, failing to recover the debt by other means, the plaintiff instituted the present suit on the 19th January 1849.

On the 5th April, defendant Khujeena alone filed a reply, denying the bond and her previous acquaintance with the plaintiff, and pleading that the plaintiff was a servant and creature of the plaintiff in case No. 255, Hingun Sowdaghur, at whose instigation he (plaintiff) had instituted this suit.

The defendant Seernee allowed judgment to go by default.

The moonsiff considers this and other cognate cases, No. 255 and No. 70, have all the same origin, viz., a desire on the part of Hingun Sowdaghur to gratify his revenge for the disappointment he had suffered by the defendant Khujeena refusing to become his mistress, and he (the moonsiff) refers to his decision in other cases, containing arguments for rejecting the bond on which the present claim is grounded. He adds that the witnesses attesting the said deed are unworthy of credit, and that there can be no doubt the real plaintiff is Hingun and not Muthoor Mohun, who is merely a dependant of Hingun's, and acting in collusion with him to harass and annoy the defendants for the reasons set forth by the defendant Khujeena.

In appeal, the plaintiff demurs to the moonsiff's finding as opposed to the evidence. The moonsiff gives no satisfactory reasons for rejecting the evidence of the witnesses to the bond. The witness Baboolal, the proprietor of the house in Colonelgunge, states distinctly that the money was borrowed in his presence from the plaintiff by defendants, and that when they received it they paid him a portion of it on account of rent and kept the balance. This witness is a respectable party, and there is nothing in his testimony or that of the other witnesses contradictory, or calculated to excite suspicion. The stamp paper is endorsed to Musst. Seernee on the 21st August 1848, the very day the bond was executed. The signatures of the defendants on the bond correspond with those on their wakulut-namat's, which, in the instance of defendant Khujeena, is so peculiar as scarcely to leave a doubt of its authenticity. Muthoor Mohun does not deny or attempt to conceal that he is a servant of Hingun Sowdaghur, on the contrary he admits it, and that the loan was given on the said Hingun's premises.

On the other hand, the defendant Khujeena offers no proof whatever in support of her allegations, and the other defendant allows judgment to go by default. There are no premises whatever for the moonsiff's suspicions, except those created by his own imagination.

The bond is proved good and valid to the satisfaction of this court, and accordingly a verdict is given for the plaintiff, with costs, and the decision of the lower court set aside.

ZILLAH MOORSHEDABAD.

PRESENT: D. I. MONEY, Esq., JUDGE.

THE 20TH JUNE 1850.

No. 44 of 1850.

Regular Appeal from the decision of Moulvee Momtaz Alli, Moonsiff of Gowa.

Kisto Nund Nundee, (Defendant,) Appellant,

versus

Neel Comul Sircar, (Plaintiff,) Respondent.

SUIT for the recovery of arrears of rent, with interest, due from 1252 to 1255 B. S., amounting to Company's rupees 223-13-8. Instituted 3rd July 1849, decided 31st January 1850. •

The plaintiff states that he took an ijarah of turruf Belaspoor, for 7 years, from 1252 to 1258 B. S., from Ranee Jurow Cowree; and that the defendant held a jumma of Company's rupees 271 in his own name and in the name of his nephew, Goluknath Mojoomdar; that he received from the defendant

231-9	.....t....	in 1252 B. S.
232	.....	1253 „
225	.....	1254 „
206	.....	1255 „

or total, ... 894-9, but that he failed to pay 189-7, which had become due, and he therefore brought this action against him.

The defendant, Kisto Nund, appeared through his vakeel, but filed no answer, and the defendant Golucknath did not appear, although the usual processes of the court were issued.

The moonsiff considered the evidence for the plaintiff satisfactory, and gave a decree in his favor, exempting Golucknath from liability as the jumma in his name was merely nominal.

The defendant appeals from this decision, on the ground that the moonsiff did not take his answer, although there was a delay in offering it in consequence of his pleader's illness; that he really held the said jumma, but owing to the unproductiveness of the soil he

had applied for and obtained permission from the zemindar to hold other more fertile lands in lieu of them, which the ijaradar did not comply with, and that he could not in consequence pay the arrears of rent.

The moonsiff, in his decree, calls one of the two defendants a furzee. This, agreeably to the Circular Order of the 29th July 1809, rendered the case liable to a nonsuit. Again, agreeably to Construction 775 of 3rd May 1833, the evidence of the peon who served the notice should have been taken. I therefore admit the appeal, and without reference to its merits remand the case for re-trial. The stamp fees to be returned to the appellants.

THE 20TH JUNE 1850.

No. 20 of 1850.

Regular Appeal from the decision of Sheikh Gholam Furreed, first Grade Moonsiff of Ilurhurparrah.

Kisto Mohun, Ram Mohun, and Ramanund Ghose, (Defendants,) Appellants,

versus

Neel Comul Doss and Shukkea Munee Dasseah, (Plaintiffs,) Respondents.

SUIT for the recovery of a debt, amounting to rupees 849-8, principal and interest. Instituted 21st May 1849, and decided 19th December 1849.

The plaint states that there were money transactions between the defendants and the plaintiffs' ancestor, Debeechnurn Ghose, in his golabarreo, at Parragram; that on the 12th Srabun 1251 B. S., on adjusting accounts, there was a balance against them of 99 rupees; that the defendants, being unable to pay, executed a bond, which was attested by witnesses, pledging to make good the amount in the month of Bhadoon of the said year. They paid, however, only five rupees on the 2nd Chyete 1252 B. S., and the plaintiffs, as heirs of the said Debeechnurn Ghose, sued against them for the recovery of the balance 94 rupees, with interest.

The defendants denied the debt.

The plaintiffs, in their replication, added that Kistomohun had signed his own name on the deed, and the others attested it with their *marks*.

The moonsiff considered the plaintiff's claim established, and gave a decree in his favor for rupees 167-15-9-2, including costs.

The defendants appealed from this decision, on the grounds chiefly that the moonsiff did not call for their evidence; that the witnesses to the execution of the deed resided in distant villages; that, if they had had money transactions with the plaintiffs, they (the plaintiffs) would have kept up regular khata buhees, whereas they

could only produce some papers fictitiously drawn up in proof of the same, and that the moonsiff acted contrary to the Circular Order of the 13th September 1843; that he had returned the principal document, on which the plaintiff's claim was based, to the plaintiffs, and made no mention of it in his *fysalla* before the expiry of the period of appeal, which is quite irregular.

In this case the requirements of Act XII. 1843 have not been fulfilled. The appeal is therefore admitted, and the case, without reference to its merits, will be remanded to the moonsiff for re-trial. The stamp fees will be returned to the appellants.

THE 21ST JUNE 1850.

No. 79 of 1850.

Regular Appeal from the decision of Sheikh Gholam Furreed, first grade Moonsiff of Hurhurparrah.

Chubbee Loll Doss Mundul, (Defendant,) Appellant,

versus

Bissonath Biswas, (Plaintiff,) Respondent.

SUIT for 52 rupees, 13 annas, 14 gundahs, 1 cowree, principal and interest. Instituted 11th January 1850, and decided 26th April 1850.

The plaintiff states that the defendants borrowed from him 44 rupees, and executed an *ikrarnameh* on the 14th Bysakh 1255 B. S., by which he bound himself to supply the plaintiff with silk, or pay off the amount, and that he had not fulfilled his engagement.

The defendant denies the claim. He admits that he borrowed 25 rupees from the plaintiff, and executed a bond in the month of Maugh 1253 B. S.; that he failed to supply the silk; and that the plaintiff, calculating his profit at 1 rupee per seer of silk, made him execute the *ikrarnameh* alluded to, but that he had paid the amount specified in the *ikrar* without receiving back the deed; that a quarrel ensued, and the plaintiff in consequence brought this false action against him.

The moonsiff considered the evidence in support of the plaintiff's claim satisfactory, and gave a decree in his favor. He states as one of the grounds for deciding the case, that the roobukar-nuvees of his court had reported that it impeded the disposal of other 15 suits.

The defendant, in his appeal, pleads that sufficient time was not allowed to him for establishing his pleas; that this was opposed to Section 6, Regulation IV. 1793, and the Circular Order of the 4th February 1840, and that there was no Regulation which sanctioned so hasty a decision on the part of the moonsiff upon the report of the *amlah*.

The moonsiff, in this case, as in case No. 20 of 1850, has not attended to the requirements of Act XII. 1843, as explained in paragraph 2, of the Circular Order, 16th August 1844. He has also

received a report from one of his amlah contrary to Regulation IV. 1793, Section 6, and Circular Order of the 4th February 1840. The appeal is therefore admitted on these grounds, and, without reference to its merits, the case will be remanded to the moonsiff for re-trial. The stamp fees to be returned to the appellant.

THE 28TH JUNE 1850.

No. 21 of 1849.

Regular Appeal from the decision of Moulvee Syed Abool Wahid Khan Bahadoor, first grade Principal Sudder Ameen of Moorshe-dabad.

Mr. Lewis Teiry, (Defendant,) Appellant,

versus

Mr. W. Holloway, (Plaintiff,) Respondent.

THE plaintiff's statement is to the effect that he came to Moorshedabad from Calcutta to obtain employment in the service of the Nowab Nazim; that he was recommended to apply through the defendant; that the defendant kept him waiting under various pretences; that at last he was introduced to the Uruzbegee by Mr. Macnamara, and received a gun to repair on trial; that having no apparatus to repair it with he went to Calcutta for it with the knowledge of Mr. Moss; that in his absence the defendant took every opportunity to speak against him to the Uruzbegee, and give him a bad name, telling him that he had made off with the gun, in order that he might obtain no employment in the Nizamut, he, Mr. Teiry, the defendant, being afraid if he did that it would interfere with his own position and prospects as a servant of the Nowab Nazim; that the defendant brought a false charge against him in the magistrate's court, accusing him of absconding from his service with two bottles of alcohol and bronze solution; that the magistrate issued a warrant against him, and on his return from Calcutta he was ordered to find bail to the amount of 200 rupees, and being unable to produce it was placed by the magistrate of the court in the custody of two peons; that the charge not being proved was dismissed by the magistrate, and the plaintiff acquitted; that such a charge damaged the plaintiff's reputation and injured his character, and that he has been obliged to bring this action against the defendant, who is a servant of the Nowab Nazim, on the receipt of 500 rupees per month, and very opulent, estimating the damages at 3,000 rupees, with interest to the date of realization. The plaintiff refers, as precedents in his favor, to the following cases: Mr. McKinnon, appellant, Sudder Dewanny Adawlut Reports, vol. VII, part 3, page 149, 1844, the Revd. Mr. Shepperd, appellant, Sudder Dewanny Adawlut Reports, 1848, page 59.

The defendant, in his answer, states that this suit was brought against him and his witnesses in the case before the magistrate by the plaintiff through the advice of persons who are inimical to him, the defendant; that the charge he made against the plaintiff in the foudaree court was proved by his witnesses; that according to the decision of the Sudder Dewanny Adawlut, published in the *Government Gazette*, an action cannot be brought against such witnesses, and that should an action be brought it is liable to a nonsuit; that he has been employed 14 years in the Nizamut, and had previously charge of all the machinery used for the stables, and draws a large salary; that the plaintiff is a "gora," was a soldier, and is now an ironsmith, and that it is not likely he should bear him enmity; that he knows nothing of the plaintiff's going to the Uruzbegee nor of his taking a gun for repair; that the plaintiff came to him in distressed circumstances, and he took him into his service on a monthly salary of 32 rupees, and that he entered into a written agreement to serve him for five years; that after serving only three days the plaintiff twice received from him 8 rupees 12 annas, for his own necessary expenses, and then absconded, taking with him two bottles of alcohol and bronze solution; that he complained against him in the magistrate's court, and that the case was proved, but dismissed because brought against a *litterate* man, and consequently not cognizable; that had his charge against the plaintiff not been proved, he would have had some ground for his action. As the case was proved, how can the plaintiff bring a suit for defamation of character? That the plaintiff is a "gora" without respectability, in straitened circumstances, and an ironsmith by trade. How then can his character be valued at 3000 rupees? That the plaintiff was never confined in jail, and that if he was placed by the nazir in the custody of two peons for not giving bail, the nazir and the magistrate are responsible; and as his respectability was not injured by it, he had no ground for bringing the action against the defendant. That the precedents quoted by the plaintiff are not applicable to this case. That there the plaintiffs were one a rajah, one a European, and one a clergyman, and that the plaintiff in this case is not in the same position.

The plaintiff, in his replication, repudiated the imputation that he was influenced in this action by the parties mentioned by the defendant. That the Sudder Court's decision, quoted by the defendant as sufficient authority for nonsuited the case, is not applicable, since it implies that when the plaintiff, with a view to prevent any person from being a witness, includes him as a defendant, the case may be nonsuited, but not otherwise. That the defendant has stated that he, the plaintiff, is a "gora," or fair colored man, was a soldier, and is now an ironsmith; that he (plaintiff) admits he is a "gora," but British born; that he was a soldier, but men of noble birth and even royal blood have served as soldiers; that the defendant himself is

country born, of Madras extraction; that he never entered into his service; that there was no agreement as alleged by the defendant, that it was not likely, with his knowledge of engineering, he would take service for 32 rupees per mensem; that the magistrate's roobukaree would show that the agreement deed entered by the defendant in the case in the foudaree court, was a fictitious one; that had he been punished for the false complaint in the magistrate's court he would have been ruined; that it will be proved that the defendant had given out in the station that he (the plaintiff) had run off with the Uruzbegee's gun; that the defendant injures the plaintiff's reputation when he states that he has no respectability; that the defendant states that as he was not confined in jail, when he could not furnish bail, but only in the custody of peons, he therefore received no injury, but still the distress and harassment of mind he was subjected to by being brought to trial on a false charge of theft was a grievous injury to his character, for which he seeks reparation.

The principal sudder ameen considered the evidence for the plaintiff sufficient to establish his claim to damages on account of defamation of character, and gave a decree in his favor to the amount of 400 rupees.

The defendant appealed from this decision on the following grounds: that the principal sudder ameen had decided the case contrary to the decision of the Sudder Court, gazetted on the 22nd April 1841; that the defendant had given his deposition in English before the magistrate, and the depositions of his witnesses taken by the magistrate do not at all show that the plaintiff was charged with theft by the defendant; that the defendant complained against the plaintiff under Regulation VII. 1819, before the magistrate, and it was not right on the part of the magistrate to state in his roobukaree that the *theft* was not proved; that the fact of the plaintiff's being his servant was proved by the witnesses he called, notwithstanding which the principal sudder ameen decreed the case against him; that a man of honor would never serve as a soldier or turn iron-smith; that as the principal sudder ameen did not coincide with the plaintiff in the estimation he made of the value of his own respectability, and as it was proved by the defendant's witnesses that the plaintiff is poor, the principal sudder ameen ought not to have decreed his claim even in part, that if the magistrate put him on bail it was no disgrace, and the papers of the foudaree case do not show that he was ever kept in the custody of two peons.

The plaintiff, in this action, has filed certain exhibits upon plain paper in support of his claim for the recovery of damages on account of defamation of character, which ought to have been stamped, and the principal sudder ameen has allowed them to be put in evidence, and alludes to them in his decree. It is not, moreover, mentioned in the petition with which they were filed, for what purpose they were put in evidence. As the admission of such documents on plain

paper is contrary to Regulation X. 1829, and the Circular Order of the 7th January 1842, and they were filed without conformity to Clause 4, Section 10, Regulation XXVI. 1814, I admit the appeal, and, without reference to its merits, remand the case to the lower court for re-trial. The value of the stamp in appeal will be returned to the appellant.

THE 28TH JUNE 1850.

No. 59 of 1850.

Regular Appeal from the decision of Baboo Dwarkanath Roy, first grade Moonsiff of Lulbaugh.

Ramchurn Dutt, (Defendant,) Appellant,

versus

Obluck Tewaree, (Plaintiff,) Respondent.

SUIT for the recovery of Company's rupees 14-3-2, principal and interest of a mortgage bond, executed 19th Maugh 1252 B. S. Instituted 3rd November 1849, and decided 21st March 1850.

The plaintiff states that the defendant borrowed from him 12 Company's rupees and executed a bond for the amount, mortgaging his shop at Gora Bazar, and promising to pay the debt in the month of Assar 1253 B. S.; that he paid only 2 rupees 8 annas, which payment was endorsed at the back of the bond, and that he therefore brought this action against him for the balance with interest.

The defendant, notwithstanding the usual processes of the court were issued, did not appear to defend the suit.

The moonsiff, upon the execution of the bond being proved, considered the plaintiff's claim satisfactorily established, and, on the defendant's not appearing to defend the suit, gave an *ex parte* decree in favor of the plaintiff.

The defendant appeals from this decision, pleading ignorance of the service of the processes of the lower court, and denying the debt and the execution of the bond. He urges also that the bond was not attested by the writer of it; that the witnesses contradicted each other, and that a comparison of his general signature with his alleged signature on the bond, would prove that the signature on the bond was not genuine.

The processes in this case appear to have been duly and regularly served, and I see no ground for disturbing the moonsiff's *ex parte* decision, which I therefore confirm, dismissing the appeal, with costs

THE 29TH JUNE 1850.

No. 66 of 1850.

Regular Appeal from the decision of Moulvee Momtaz Ullee, Moonsiff of Gowas.

Rughoonath Singh, (Defendant,) Appellant,

versus

Kistonath Naipunchunun, (Plaintiff,) Respondent.

SUIT for the recovery of arrears of rent, principal and interest, rupees 107, 1 anna. Instituted 14th January 1850, and decided 20th March 1850.

The plaintiff states that he obtained a decree in the sudder ameen's court, authorizing him to fix a jumma of Company's rupees 55, on 31 beegahs, 3 cottahs, 17 gundahs of land in Joyram-pore; that the rent due from the defendant from 1255 to the month of Poos 1256 B. S. was 96 rupees 9 annas, which he failed to pay upon demand, and he therefore brought this action against him.

The defendant did not file any answer.

The moonsiff considered the plaintiff's claim established, and gave a decree in his favor.

The defendant appealed from this decision on the following grounds. That he was absent in his zemindaree in the Beerbhoom district, about the distance of two days' journey, and was therefore ignorant of the institution of the suit; that Boondea Birmonca ought not to have been made defendant in this case, as *he* only held the jumma, and he brought this to the notice of the sudder ameen in a ruffanameh entered in a jumma nishust suit, instituted by the plaintiff against himself and Boondea Birmonca as defendants, in which, without reference to his objection, the sudder ameen gave a decree against them both, and that he had paid rupees 29-11-6 before, and 52 rupees after, the institution of the case above adverted to, and holds receipts for the same.

In this case, it does not appear that, after the issue of the notice agreeably to the provisions of Regulation XXIII. 1814, and a return to the effect that the defendant could not be found, the proclamation enjoined by the same regulation was affixed in the moonsiff's cutcherry, as well as a copy of the same at the defendant's residence. Moreover, the evidence of the peon serving the notice was not taken as proof of its issue, in conformity with Construction No. 775 of 3rd May 1833. The appeal is therefore admitted, and the case, without reference to its merits, will be remanded to the moonsiff for re-trial. The value of the stamp in appeal to be returned to the appellant.

THE 29TH JUNE 1850.

No. 67 of 1850.

Regular Appeal from the decision of Moulvee Momtaz Ullee, Moonsiff of Gowas.

Boondiah Braminee, (Defendant,) Appellant,

versus

Kistonath Naipunchunun Buttacharjea, (Plaintiff,) Respondent.

THE circumstances of this case are similar to case No. 66 of 1850.

The defendant appeals on the pleas that she was absent on pilgrimage to Bydenath and ignorant of the institution of the suit; that the land in question was not in her possession, and that the fact could be proved by a reference to the ruffanameh executed by one Rughonath Singh.

The decision given in case No. 66 of 1850, is applicable to this case also.

THE 29TH JUNE 1850.

No. 56 of 1850.

Regular Appeal from the decision of Sheikh Gholam Furreed, first grade Moonsiff of Hurhurparrah.

Awul Mundul, (Defendant,) Appellant,

versus

Puddoo Lochun Sircar, and after his death, Janokeenath Sircar, (Plaintiff,) Respondent.

SUIT for the recovery of Company's rupees 230-5-6, under a bond debt, executed 14th Maugh 1252 B. S. Instituted 30th December 1848, decided 18th March 1850.

The plaint states that there were money transactions carried on between the plaintiff and defendant through the plaintiff's gomashtha, and that, upon an adjustment of accounts, there was a balance against the defendant of Company's rupees 170-0-10, for which the defendant executed a bond, but failed afterwards to pay the defendant. He therefore sued him for the amount with interest.

The defendant denied the claim. He admitted that he had borrowed Company's rupees 32, through Shookmey Holdar, the plaintiff's gomashtha, on the 13th Srabun 1250 B. S., and executed a bond, but that, on the 5th Srabun 1253 B. S., he had paid Company's rupees 68, both principal and interest, to the deceased plaintiff, through his gomashtha, Sheebchurn Nauth, and received back the bond.

The plaintiff added, in his replication, that it was true that the defendant had borrowed and paid 32 rupees, but that it had nothing to do with this suit, upon the institution of which the defendant tried to effect a compromise,

The moonsiff considered the plaintiff's claim established, and gave a decree in his favor.

The defendant appealed, on the ground that the witnesses were plaintiff's servants; that the khata-buhees filed by the plaintiff were got up by him, and that the moonsiff did not call for proofs of the defendant's assertion in his answer; that the plaintiff did not cause the attendance of respectable witnesses, who would undoubtedly have refuted the plaintiff's statement.

The moonsiff in this case has not fulfilled the requirements of Act XII. 1843, Sections 1 and 3, and Circular Order of the 16th August 1844. His decision is partly written by himself, and partly by his amlah. He has moreover specified in his written opinion the amount of interest as 23-6-12, and in the decree in which the translation is incorporated he specifies 23-2-12. Agreeably, therefore, to the provisions of Section 2, Clause 2, Regulation IX. 1831, and Act VII. 1838, I admit the appeal, and, without reference to its merits, remand the case for re-trial. The stamp fees to be returned to the appellant.

ZILLAH MYMENSING.

PRESENT: R. E. CUNLIFFE, ESQ., JUDGE.

THE 1ST JUNE 1850.

No. 45 of 1849.

*Appeal from the decision of Pundit Nurhurree Seromonee, Principal
Sudder Ameen of Zillah Mymensing, dated the 16th May 1849.*

Doordana Begum and Subeeroonnissa Begum, (Defendants,)
Appellants,
versus

Syed Hafiz Ruhman, Sageeroonnissa, and Nujumoonnissa,
(Plaintiffs,) Respondents.

RESPONDENTS sued to cancel a summary order under Act IV. 1840, and to obtain possession, with wasilat, of 4 annas gundahs 13-1-1 of talook Hedalet Khan, pergunnah Hoosunshahye, which was decreed in their favor by the principal sudder ameen, who declined to receive the answer which appellants wished to file 10 months and 23 days after the plaint was filed, as he could not, on account of discrepancies, believe the witnesses adduced to prove that the delay arose from the illness of Doordana Begum for a year, and the absence of Subeeroonnissa Begum from her house from Maugh 1254 to the 3rd Chyte 1255. In appeal, it was urged that the principal sudder ameen had not stated what the discrepancies were, and that the cause of the delay had been satisfactorily proved. Respondents, in reply, observed that the excuse set up would be proved to be false by a copy of a vakalutnamah, dated 25th Kartikh 1255, executed by both the appellants at their own house, which they had filed. The point for decision is, have the appellants alleged and proved such sufficient cause for the delay in filing their answer as would have authorized the principal sudder to admit it? They have not done so, and the falsehood of the excuse set up is proved by the vakalutnamah abovementioned, executed by both the appellants at their own house, long after the issue of the istehar in this case. The principal sudder ameen's decision is affirmed, and the appeal dismissed, with costs.

THE 3RD JUNE 1850.

No. 46 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 10th May 1849.

Boodram Sha No. 1, Manick Hurnee No. 2, and Chunderkaunt Doss No. 3, (Defendants, with others,) Appellants,

versus

Hooreelall Sukul, (Plaintiff,) Respondent.

RESPONDENT states that the defendants Sheikh Koodrutullee, Muzzurullee, Himmutullee, and Moradullee are the proprietors of 12 annas 16 gundahs of talook Mahomed Tuckee, pergunnah Nussarajeal, and the sudder jumma of their share was rupees 44; that they gave him a farm of it for 10 years, from the 9th Kartikh 1238, at a jumma of rupees 307-1-8, with the condition that he was to pay the sudder jumma, receive rupees 106-6-8, as profits, and pay the rest, rupees 156-11, to them, and afterwards, on the 10th Maugh, executed an ikrar directing him to pay the rupees 156-11 yearly to Mohunlall Dhohee, in liquidation of a bond for rupees 890, and if that person sued them he was to be answerable, and in like manner they would not dispossess him, or if he was dispossessed they would be answerable for the profits of the farm, and to Mohunlall Dhohee; that he was in possession till Sawun 1244, paid the revenue, and the mahajun, whose widow being about to sue the talookdars, he paid her in full and received back the bond; but the share of Himmutullee and Moradullee having been sold in execution of a decree on the 28th Assar 1244, and purchased by Brindabun Deb, he was dispossessed from Bhadoon 1244, by the appellants, and accordingly sues to recover rupees 1029-0-16-2, on account of profits of the farm and on account of the money paid for the debt of the talookdars. It is unnecessary to give an abstract of the answer of the talookdars who appeared, as they have been released from the claim.

Appellants Nos. 1 and 2 replied that they had purchased the shares of Moradullee and Himmutullee, in the name of Brindabun Deb, and got the bynamah on the 3rd Poos 1245, and did not by force dispossess respondent, but were put in possession by a collectorate peada, and if the respondent really had the farm he would have brought it to notice before or after the sale.

The principal sudder ameen decided in favor of respondent, and decreed rupees 472-13-3 against appellants only, as it was proved that they had purchased the shares of Himmutullee and Moradullee, and dispossessed the respondent from the farm of their shares which they were not authorized to do.

In appeal, it is urged that they are not liable under the terms of the ikrar filed by respondent, and because the respondent did not bring to notice, before or after the sale, that he had a farm of the

property sold; that they only obtained possession of part of the property on the 9th Chyte 1245, and part in Poos 1248, and that 1 anna, 18 gundahs of the property had been decreed to other parties.

The points for decision are:

1st. Can the appeal of Chundërkaunt Doss be admitted, not having appeared in the lower court?

2nd. Are the defendants from whom the farm was taken alone liable, under the condition of the ikrar, for any loss the respondent may have sustained, or are the appellants liable?

3rd. Are the appellants not liable because the respondent did not bring to notice before or after the sale that he held a farm of the property for the profits, &c. of which he now sues?

4th. If the appellants are liable, are they so for the sum decreed against them, or entitled to any and what reduction on account of having, as they allege, only obtained possession of the shares of the talook which they purchased, part on the 9th Chyte 1245 and part in Poos 1248?

5th. Are appellants entitled to any and what reduction on account of 1 anna, 8 gundahs of the property purchased by them having been, as they allege, decreed to other parties?

The appeal of Chunderkaunt Doss cannot be admitted, as he has assigned no reason whatever for non-appearance in the lower court.

With regard to the second point, the appellants cannot be held to be not liable, as the ikrar states that, if the respondent is dispossessed by them, or by their means, or by order of any court, they will be answerable for the profits, &c. The dispossessing in this case was entirely the act of the appellants, who must be held liable for the loss respondent has sustained. In regard to the third point, I do not see that the respondent was bound to bring to notice (of some court, I presume, is meant) his farm of these shares, and there can be little doubt that appellants were cognizant of it, for he retained possession of the farm of the shares which remained unsold. On the fourth and fifth points, it is sufficient to state they are mere assertions, no proofs in support having been adduced. The decision of the principal sudder ameen is affirmed, and the appeal dismissed, with costs.

THE 3RD JUNE 1850.

No. 54 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 22nd May 1849.

Puddumlochun Chowdry, (Plaintiff,) Appellant,
versus

Kurtee Mundul, (Defendant,) Respondent.

APPELLANT states that the defendant holds 4 pakees busut, the jumma of which at the villagerate is rupees 5, and pykusht 2 khadas, 10 pakees, 15 gundahs, the jumma of which at the village rates

is 1 rupee 14 annas per pakee, making a total of rupees 85-2-6, in his talook mouzah Hejulea, &c., pergunnah Attya, and not paying, the usual notice was issued upon him, and sued for rent from Bysakh 1248 to Sawun 1249, in the moonsiff's court, in which the respondent stated he held 4 pakees busut, 2 khadas 4 pakees pykusht, at 8 annas per pakee, and 4 pakees basha land at 4 annas, making a total of rupees 21, under a pottah from the former proprietors, Birahim Allee and Nowshere Allee; that the moonsiff rejected the pottah, fixed the jumma at rupees 1-14 per pakee, but, as he had not proved issue of the notice, only decreed for the jumma admitted, which was upheld in special appeal; that he has again issued notice on respondent on the 2nd Jyte 1254, and now sues for rent at the rates above mentioned from Bhadoon 1249 to Assar 1254.

Respondent, in reply, stated his jumma and land as in the suit in the moonsiff's court, which he held under a pottah of the 12th Phalagoon 1233; that Rajmohun Neogeo, who had bought 8 annas of Rooba, imprisoned his sons and took rupees 79-4 in excess, for which he sued and obtained a decree in the moonsiff's court, which was upheld in special appeal, and as the jumma was in the former cases fixed at rupees 21, this suit is instituted contrary to Section 16, Regulation IV. 1793, and by Construction No. 999 appellant is liable to be punished; and the suit is improperly laid, as by Construction No. 1272 it ought to have been laid at one year's rent; that rupees 103-4 was all which was due, and, of that, rupees 6 had been paid at poonias, and that appellant's people seized and imprisoned his son and took rupees 125, for which they were punished in the foudjdarce, and accordingly there are 27 rupees due to him.

Appellant replied that the pottah was a forgery, and in the suit in the moonsiff's court could neither prove it or having paid accordingly; that the rate is stated in the former decrees, in conformity to which he has issued the notice and sued for rent, which is correct according to Construction No. 811; denied that his gomashita took any money from respondent's son, and was only punished for imprisoning him.

The principal sudder ameen, considering the respondent's jumma to be a mokurruree one of rupees 21, decreed for arrears of rent for the period claimed, at that rate, from which decision plaintiff has appealed, alleging he is entitled to the whole sum claimed. Before stating what I consider the points for decision, I must observe that the points for decision recorded by the officiating principal sudder ameen were, "what is the quantity of land held by the defendant, and is the jumma mokurruree or not, and if not so, what is the amount of the jumma at the rate of the village, and is plaintiff entitled to the rent for the period sued for?" But the principal sudder ameen records that the only point for enquiry is whether the jumma is mokurruree, or not, and, having decided it, decrees at that jumma for the whole period claimed, without stating why he consi-

dered the respondent liable, notwithstanding he had alleged he had not only paid the whole rent but that rupees 27 were due to him.

The points for decision are—

1st. Is investigation of the suit barred by its having been improperly laid contrary to Construction No. 272, or is it barred by two suits, one in the moonsiff's court and the other in the suit of Rajmohun Newgee for the same cause of action, having been previously tried, such being contrary to Section 16, Regulation IV. 1793?

2nd. Can this suit for arrears of rent on a hustaboodee jumma be maintained, or is it necessary previously for appellant to obtain a decree empowering him to assess the land held by respondent?

3rd. Is the jumma liable to be increased or not?

4th. If it is liable to be increased, what is the quantity of land in respondent's possession and the proper jumma of it?

5th. Is the appellant entitled to rent for the period previous to the issue of the notice?

6th. What is the amount of rent due to him?

The appeal is decreed, and the suit remanded for trial on the issues indicated above.

THE 5TH JUNE 1850.

No. 55 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 7th June 1849.

Sumboo Chunder Rai No. 1, and Nundkoomaree Dassea, wife of Gopal Chunder Baboo, (deceased,) No. 2, (Defendants,) Appellants,

versus

Nubkishwur Doss, (Plaintiff,) Respondent.

RESPONDENT sued to cancel the sale by the collector of his talook, kismut Maisbag, &c., pergunnah Hoosheishahye, on the 16th Aughun 1243, in execution of the decree of Roopram Surmah, and purchased by appellant No. 1, and by Guneshpershad, decree mohurer, and appellant No. 2's husband, serishtadar of the collectorate, in the name of his brother-in-law, Nund Lall Baboo, on the following grounds:

First.—That the ishtihar for the sale was issued on the 29th Assin, during the time the cutcherry was shut for the Dusserah.

Second.—That Sicca rupees 2-9-9-12 was improperly added in the lotbundee as the batta of rupees 39-3 hal khurch, which sum was Company's rupees.

Third.—That the sale was fixed for the 15th Aughun, and the collector, without waiting for a reply to a reference made to the judge, who had ordered it to be sold for the decree of Khaja Nikoos, and without issuing an ishtihar of postponement, sold it the next day.

Fourth.—That the collector did not issue an ishtihar in his own cutcherry or in the civil court, contrary to Sections 12 and 16, Regulation XLV. 1793, and Clause 3, Section 2, Regulation VII. 1825.

Fifth.—That the estate was advertised for sale for the decree of Khaja Nikoos.

Sixth.—That the estate, on account of disputes among the shareholders, was under attachment under Regulation V. 1827, and the sale of such estates is contrary to Clause 2, Section 10, Regulation III. 1818; that the sale by the collector, without waiting for a reply to his reference and issuing an ishtihar, is contrary to Clause 3, Section 3, and Clause 1, Section 5, Regulation VII. 1825, and Circular Order 5th March 1842, and the purchase by persons employed in the collectorate is illegal by Sections 18 and 20, Regulation XI. 1822.

Appellants, in reply, alleged that the Dusserah vacation commenced on the 23rd Assin, and that the ishtihar had been issued on the 21st; that the hal khurch entered in the principal sudder ameen's roobukaree of the 14th August 1835, rupees 39-3, are Sicca rupees, because Company's rupees were made current three years after; that a reply to the collector's reference was received the same day in an English letter, and the collector's roobukaree also returned, on which the sale was ordered to be held; that an ishtihar was issued according to the Regulations referred to by respondent, and that it is not the practice to put the ishtihars issued in the judge's court and in the collectorate with the nuthee; that Regulation III. 1818 is irrelevant, referring only to persons opposing Government; and denied that the estate was purchased benamee by Guneshpershad and Gopal Chunder, for Nund Lall sold his share to appellant No. 2 on the 4th Phalgun 1247, and the regulations, &c., referred to by the respondent only apply to sales for arrears of revenue.

Respondent replied that the ishtihar was not issued on the property, in the tehseel cutcherry, or at Mudargunge thannah in which the estate is situate, and on the 29th Assin a false report of the darogah of Niklee was filed that it had been issued at his house; that the hal khurch he refers to is the tullubana of the collectorate and not the hal khurch of the civil court, and that Company's rupees were made current in 1835 and the ishtihar issued in October 1835; denied that the collector had received a reply to his reference, and if he had it would be with the nuthee and referred to in the roobukaree of the 29th November, as would also have been mentioned the issue of the ishtihar of postponement; that the judge, on the 16th September, in the case of Bydenath Bajpie, directed, by order of the Sudder Dewanny, that the estates advertised should not be sold for any other decree; that Nund Lall lived in the serishtadar's *bausa* and had not the means of purchasing the property.

Appellants rejoined that the ishtihar was issued from the serishta on the 21st and from the nazir's office on the 23rd Assin, and that

it is recorded in the peada's kyfeut that it had been issued at his house, &c.

The principal sudder ameen cancelled the sale as illegal, and ordered the purchase money to be repaid to the purchaser, because the collector, having fixed the sale for the 15th Aughun, after issuing the ishtihar on the 22nd Assin, made a reference to the judge, who had before ordered the estate to be sold for the decree of a Khaja Nikoos, to enquire if the sale was to be postponed on that account, and before receiving a reply, and without issuing ishtihar of postponement, sold the estate the next day, and that it was illegally purchased benamee by appellant No. 2's husband, serishtadar of the collectorate, under Section 15, Regulation II. 1793; and because it does not appear that the ishtihar had been issued in the chief village of the estate by beat of drum, nor, as was customary, had an ishtihar of postponement been issued in the collectorate.

In appeal, it was urged that the judge recorded in a roobukaree, 1 month 12 days after the sale, that the collector's roobukaree of reference had been replied to on the same day by an English letter, and that the precedent in the case of Noorunnissa is irrelevant; that there was no order of the judge forbidding the estate to be sold in execution of the decree of Roopram; that at the time of the sale there was no law which required the issue of an ishtihar of postponement, and such ishtihars are only applicable to sales for arrears of revenue by Clause 2, Section 8, Regulation XI. 1822; that appellant No. 2's husband was not serishtadar at the time, having resigned on the 23rd Aughun 1242; that kismut Satal, where the ishtihar was issued, has a market, and is the largest kismut in the estate; that the ishtihar shows it was issued on the land, and where it is worm-eaten will have been "as is customary."

Respondent replied that kismut Satal is not the largest kismut, which Maisbag is, and that it is in thanna Niklee, 3 pahars distance; and the ishtihar not having been issued in the principal village, the sale is liable to be cancelled, as per precedent of the Sudder Dewanny of the 5th October 1841.

The points for decision are—

First.—Did the collector issue the ishtihar for the sale during the time the cutcherry was shut for the Dusserah?

Second.—Was the ishtihar promulgated in the principal village, Maisbag, by beat of drum?

Third.—Is kismut Satal the principal village or not?

Fourth.—Was Gopal Chunder serishtadar of the collectorate at the time of the sale?

Fifth.—Had the judge ordered the property to be sold for the decree of Khaja Nikoos, and did the collector make a reference to the judge on the 15th Aughun, requesting to be informed whether the sale was to be postponed on that account, and did he, without waiting for a reply, sell the estate the next day, without having issued an

ishtihar postponing the sale, and was it purchased benamee by the serishtadar of the collectorate, and is the sale invalid for any of the reasons above stated?

The appeal must be decreed, and the suit remanded for trial, as the principal sudder ameen has decided the ishtihar was not promulgated in the principal village of the estate, without having called upon the appellants and respondent respectively to prove that the ishtihar was or was not so promulgated, and, in directing that the purchase money shall be refunded to the purchaser, has not stated by whom. He will accordingly call upon the respective parties to adduce their proofs on the point indicated above, and distinctly state by whom the purchaser, if the sale is cancelled, is to be reimbursed.

THE 7TH JUNE 1850.

No. 56 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Suddler Ameen, dated the 7th June 1849.

Ruheema Banoo, daughter of Mahomed Mallee, No. 1, Busseera Banoo, daughter of Mahomed Nuzzeer, No. 2, Azeezoonnissa Banoo, No. 3, and Rownukoonnissa Banoo, No. 4, (Plaintiffs,) Appellants,

versus

Eymana Banoo, No. 1, Mymana Banoo, No. 2, Humeeda Banoo, No. 3, Furjanoo Banoo, No. 4, and others, (Defendants,) Respondents.

APPELLANTS sue to obtain possession of 5 annas, 5 gundahs, 2 cowrees of kismut Berecgagra and kismut Kamalpore, talooks No. 351 and No. 667, tuppa Hazralee, and recorded in the collectorate in the name of Kurreem Khan and others, from which respondents have dispossessed them from Bysakh 1250, and state that, a suit under Regulation VI. 1813 having been instituted, their ancestors obtained a decree for 4 annas of these kismuts as well as other talooks, from which Mahomed Alleem and others appealed, and the provincial court upheld the judge's decision as regards these two kismuts and ordered possession to be given. Quarrels having ensued, a ruffanamah was executed in 1229, between Mahomed Nuzzeer, and Mahomed Alleem's son, Mahomed Nudeem, and others, by which Mahomed Nudeem's wife, Khatoon Banoo, daughter of Mahomed Wufee, obtained anna 1-17-2, and as her husband's share annas 3-11-2, and by inheritance from her father, anna 1-15-2-2, making a total of annas 7-4-1-2, and Busseera Banoo, appellant No. 2's mother, Ateekoonnissa, annas 3-10, and Ruheema Banoo, appellant No. 1's father, Mahomed Mallee, anna 1-15-2-2, and held possession accordingly. That Mahomed Mallee died in 1241, and appellant Ruheema had possession of his anna 1-15-2-2, and her mother-in-law

Ateekoonnissa's 3 annas 10 gundahs by kabeen and hiba, making a total of 5-5-2-2, and paid the revenue; that Sheik Rumzan and others, ryots of kismut Bereegagra in No. 667, and Mahomed Tuckee, ryot of kismut Kamalpore in No. 351, not paying their rents, appellant No. 1 and her shareholders Fatima and Nooroonnissa sued them through their putwaree Noor Mahomed, and obtained summary decrees against them, to reverse which Sheikh Rumzan and other ryots of Bereegagra sued in the moonsiff's court, and, as many ryots had been sued together, it was reversed, and that decision upheld in appeal, when they were referred to a regular suit, and under color of that order respondents have dispossessed them from Bysakh 1250. Appellant No. 1 also stated she had given certain portions of the property to the other appellants.

Respondent No. 1 denied ever having had possession of or disposing appellants from kismut Bereegagra, talook Mahomed Syef in No. 667, and kismut Kamalpore, talook Mahomed Wakee in No. 351, and stated the kismuts were the talook of Mahomed Syef and that part of kismut Bereegagra had been granted as wukf for the maintenance of a musjeed, and that annas 6-2-2 of that talook besides others, on the marriage of respondent No. 4 to Mahomed Syef, were given by Mahomed Nuddeem, Khatoon Banoo, and respondents Nos. 2 and 3, to respondent No. 4.

Respondents Nos. 2 and 3 denied that appellants ever had possession, and state that Mahomed Syef obtained sunnuds for his talooks in 1159 and 1163, and left his son Mahomed Wasik and his wife, Nujeeba Banoo, and daughters, Jumeela Banoo and Sunjeeda Banoo, and after Wasik and Nujeeba's death, at the time of separation of the talooks in 1189, his daughters being purdah-nusheen they were not separated, and talooks Mahomed Syef, Ahamed Khan *alias* Wasik, and Adum Khan were entered separately in the settlement papers of Nos. 351 and 667. After the death of Sunjeeda and Jumeela, the latter's daughter, Khatoon Banoo, our father, Mahomed Alleem, and aunt, Seishta Banoo, were in possession, and after our father's death Khatoon Banoo succeeded to a 9 annas share and Seishta Banoo to a 7 annas share, and after the latter we succeeded to her 7 annas share; and that appellants suing the ryots of these two kismuts, the ryots stating the lands belonged to talooks Mahomed Syef and Mahomed Wasik, the summary order under Regulation VII. was reversed on a regular suit, so appellants cannot have been dispossessed in Chyte 1249. The order of the provincial court for possession of 4 annas of the kismuts was only for Kootoobdee and Kamaldee's two barees in kismut Bereegagra and 2 annas in kismut Kamalpore, talook Kurreem, of which they are in possession, and in the Regulation VII. case Abdool Ruheem and Rumeeza Banoo admit that those 2 barees only belong to talook Kurreem, and the rest of the kismut to talook Mahomed Syef, and deny the ruffanamah, which cannot affect them as they were not parties to it.

Appellants replied that, after the separation, their ancestor, Mahomed Munneer, was recorded as malik, that Mahomed Nuzzeer, father of appellant No. 2, and Mahomed Sadik, father of appellant No. 3, and other shareholders, having applied for mutation of names, Mahomed Alleem, Seishta Banoo, and others, put in objections claiming the talooks as the talooks of Mahomed Syef, which was rejected by the collector, and in 1818 the shares were recorded in the collectorate thus : Mahomed Nuzzeer 4 annas, appellant No. 1's first uncle, Mahomed Urifce, and father, Mahomed Mallee, 4 annas, Mahomed Nazir and Mahomed Sadir 4 annas, and Mahomed Alleem 4 annas, which, and the suits under Regulation VII., and judge's fysala, prove possession within 12 years, and that the judge's decision in the suit under Regulation VI. 1813, and of the provincial court of appeal gave them possession of 4 annas of the kismuts, and not of two barees only in one and 2 annas in the other.

Respondent No. 4 made the same statement as the other respondents in regard to the talooks of Mahomed Syef, and the whole of them having finally been vested in her mother Khatoon Banoo, her father, Mahomed Nuddeem, and respondents Nos. 2 and 3, who, on her marriage, gave her a meras pottah on the 10th Sawun 1252 of the whole of talook Mahomed Syef, talook Ahamed Khan *alias* Wasik, and talook Adeem Khan, and on the same date gave her 10 annas gundahs 2-2 of talooks Nos. 351 and 667, and that under her mother's gift annas 4 1-1 is held by respondent No. 1, and the rest by respondents Nos. 2 and 3, her father Mahomed Nuddeem, and the two daughters of Zobeida and Khyroonnissa. That the appellants are liable to be nonsuited, not having included her husband, and also that the suit is barred by failure of appellant's possession for upwards of 12 years.

Appellants denied that any meras pottah or hiba had been executed by Khatoon Banoo, and that respondents Nos. 2 and 3, during the lifetime of Seishta Banoo's nephew, respondent's father, could not be her heirs.

The principal sudder ameen decided the suit was barred by lapse of time, because the appellants could not show they had been in possession within 12 years, and that the punjsala namjaree roobukaree, Regulation VI. fysala, and that of the court of appeal, copy of petition, and copy of plaint, filed by them, are long previous to this suit, and that dakhillas are not proof of possession; and since respondents say the appellants are in possession of two barees of kismut Bereegagra, the summary orders under Regulation VII., which the appellants say have not been reversed, have been against ryots of the two barees, and therefore their possession of the two kismuts is not proved; and that the respondent's ancestor, Mahomed Syef, was the proprietor of talooks Mahomed Syef and Mahomed Wasik, and that kismut Bereegagra is in talook Mahomed Syef, and kismut Kamalpoore in talook Mahomed Wasik, and that talook Mahomed

Wasik is part of No. 351, and talook Mahomed Syef part of No. 667 is proved from the sunnud of 1159, punjsala, the collectorate statement, the petition of Rumeeza Banoo, appellant's shareholder, and moonsiff's fysala of the 15th December 1842; and that it also appears that the respondents pay the revenue of talooks Mahomed Wasik and Mahomed Syef in excess of their shares of the revenue of Nos. 351 and 667, that Noor Mahomed Putwaree sued the ryots of the two kismuts for rent, and a regular suit having been instituted by Sheikh Rumzan and others in which he filed rent chittas from 1240, the summary decision was reversed by the moonsiff, and that decision upheld by the judge; and that it appears from the statement that a part of talook Mahomed Syef was separated and afterwards purchasæd by Government, which appellants have not mentioned in their plaint or reply; it therefore appears that appellants have never been in possession of the kismuts, and that respondents have been from the date of the sunnuds, nearly 100 years, and from the time referred to in the moonsiff's decree nearly 15 years.

In appeal, it is urged that only some of the ryots of Bereegagra sued to cancel the summary decision under Regulation VII., and that the decree against Shere Mahomed and others has not been reversed; and that the admission of the respondents that the appellants have possession of two barees in kismut Bereegagra and 2 annas of kismut Kumalpore, is opposed to the principal sudder ameen's decision; and that the dakhillas filed by respondents are only of talooks Nos. 351 and 667, and that respondents have not stated from what time they have been in possession.

The point for decision is, whether the suit is barred by adverse possession of the respondents for upwards of 12 years or not.

This decision of the principal sudder ameen must be reversed. The appellants, in proof of possession, have filed the collector's roobukaree of mutation of names in 1818, showing that the appellants' ancestors, notwithstanding opposition, were recorded as proprietors of the shares, as stated by them, and the judge's decision, confirmed by the provincial court of appeal, giving their ancestors possession of 4 annas of both of the kismuts; and I am at a loss to understand how the principal sudder ameen, in the face of such decisions, still unreversed by a regular suit, has recorded his opinion that the appellants have never had possession, and that it has always been held by respondents; for what has been adduced by respondents, in proof of their adverse possession, since the date of those orders, is absolutely nothing, for the decree of the moonsiff of the 15th December 1842, reversing the summary decision under Regulation VII., is chiefly based on a number of ryots having been improperly sued in one case, and disputes regarding the land; and I am surprised that the principal sudder ameen should have recorded, as one proof of the possession of the respondents, the chittas for rent from 1240 filed in that suit, as no decision regarding them was passed, nor can the

appellants be affected by any admission made by any of their shareholders in that suit. The decision of the principal sudder ameen, that the appellants never had possession of any part of the property sued for, is opposed to the respondent's admission that they have had and are still in possession of two barees in kismut Bereegagra and 2 annas in kismut Kumalpore. The decision of the principal sudder ameen is reversed, and the suit remanded for trial on its merits.

THE 8TH JUNE 1850.

No. 57 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 1st June 1849.

Kishenkaunt Chuckerbuttee, (Defendant,) Appellant, and Tarramyce Debia, (Defendant,)

versus

Bishissuree Debia, (Plaintiff,) Respondent.

THE respondent sued to recover rupees 320, being half of the principal and interest due on a bond, dated 22nd Chyete 1241, given by the appellant's father to her deceased husband, the other half being the property of the defendant Tarramyce, her husband's other wife, with whom, according to the terms of a ruffanamah between them, this bond was left.

Appellant, admitting his father had given the bond, alleged that the suit was barred by lapse of time, 12 years having elapsed from the date of it to the institution of the suit, and that the debt had been paid, or nearly so, viz., 200 rupees in Poos 1242, and 100 rupees in Phalagoon of the same year, which was endorsed on the bond, and in Bhadoon 1243, 28 rupees : when asking for the bond he was told it was at Nusseerabad, and respondent's husband died next month, and that the suit has been got up out of spite, as he was mooktar of Ramkoomar Chuckerbuttee, with whom respondent has disputes.

The principal sudder ameen decreed the sum claimed, having previously decided that the suit was not barred by lapse of time, as the courts were shut for an eclipse of the moon and for Good Friday, the two days previous to the day on which the plaint was filed, so bringing it within 12 years from the date of the bond, as he did not consider the appellant's witnesses worthy of credit, being low persons, and his dependents, and on account of discrepancies.

In appeal, it was urged that the courts having been shut will not save the respondent's time for instituting the suit, and that what the discrepancies between the witnesses are the principal sudder ameen has not stated.

The points for decision are—

Is the suit barred, and if not, has the amount of the bond, which appellant admits, been paid as alleged by him? The suit is not barred by lapse of time as the courts, being closed on the two last days of the 12 years does authorize the plaint having been filed on the first day after the courts were open, besides which, the cause of action by Construction No. 196, cannot be considered to arise previous to the money becoming payable. On the merits of the case, I concur with the principal sudder ameen, though much discrepancy is not to be discovered in the evidence of the appellant's witnesses, but they are low persons, ryots, chokeedars, and servants, unlikely to have been present at the payments, and it is singular how, after such a lapse of time, they recollect so much about the payments, &c. The appellant states the bond was not returned to him when the last payment was made, as it was at Nusseerabad, and respondent's husband died the next month, but he does not even state he asked his heirs for it.

The principal sudder ameen's decision is affirmed, and the appeal dismissed, with costs.

THE 8TH JUNE 1850.

No. 58 of 1849.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 2nd June 1849.

Brijnath Chuckerbuttee, (Defendant,) Appellant,

versus

Chunderkishwur Surmah Rai and others, (Plaintiffs,) Respondents.

RESPONDENTS sued to obtain possession of 6 arras 11½ cottahs of land in mouzah Singergaon in talook No. 601, pergunnah Nusseroojeal, stating that 4 annas of the talook belongs to Joogul Kishwur Acharje and others, which was held in farm by appellant's father up to 1247, and up to that time the rents were divided by them and appellant's father, but from 1248 appellant and his brother dispossessed them of 5 arras, 4 cottahs, gerat, and 2 arras, 4 cottahs, betee,—8 arras, 2 cottahs, from which 1-4th is to be deducted for Joogul Kishwur's share, and that appellant had stated before respectable persons that they would pay the rent.

Appellant denied that respondents were entitled to possession of the land, but merely to the rents, as he had long cultivated and paid rent to the other shareholders; that they hold only 6 arras, 12 cottahs ½ pao, and that, on the 23rd Phalgun 1247, his brother paid respondents in advance, for 1248 and 1249, rupees 21-8, for which the respondent Brijkishwur gave a receipt, and on the 15th Bhadoon 1253, the respondent Chunderkishwur took 40 rupees rent, and that 6 cottahs 3½ pao is the burmootur of Ragonath Bhutta-charje, which his heir had sold to appellant's brother.

Respondents replied that appellant has no mokurruree jote, and denied that they or their ancestors had let it to him, and denied receipt of rent, or that there was any burmootur.

The principal sudder ameen decreed possession of all the lands claimed; on what grounds it is unnecessary to state, for the point for decision is whether the suit has been decided according to law or not. From perusal of the decree, and examination of the nuthee, it appears that after the suit had been transferred from the moonsiff's court to that of the principal sudder ameen, no proceedings under Sections 10 and 12, Regulation XXVI. 1814, were held, the principal sudder ameen apparently considering the roobukaree of the moonsiff, ordering in general terms the parties to adduce proofs of their respective statements, sufficient, which it is not; and accordingly the decision of the principal sudder ameen is reversed, and the suit remanded for trial *de novo*, after conforming to the provisions of the law above referred to.

THE 10TH JUNE 1850.

No. 59 of 1850.

Appeal from the decision of Pundit Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 4th June 1849.

Bhagruttee Debia Chowdryne, Kaleekishwur Rai, and Anund Kishwur Rai, (Plaintiffs,) Appellants,

versus

Taraneekaunt Lahoree, (Defendant,) Respondent.

APPELLANTS state that the southern boundary of their mouzah Sengraoond is, on the western part of it, a road, and on the eastern part of it, Gorakhallee, and that the road passing to the south of Balwakanda goes to the east to beel Agrail, and that Gorakhallee joins the Soonea nuddee, the line of boundary passing through the beel, to the south of which is the respondent's mouzah, Kandcegram, and on the north their mouzah, of which they have always had possession; that respondent on the 29th Bhadro 1252 charged them with cutting dhan in their mouzah, and got an enquiry made by the thanna mohurir, who reported accordingly, when the magistrate ordered the darogah to report the origin of the dispute, who reported that it arose from dispossession of 1 poora 8 arras, and the magistrate, without waiting for the final report of the darogah, passed an order under Act IV. 1840, on the 30th December, giving respondent possession, which was upheld by the judge; and that the respondent has dispossessed them of 6 pooras, 8 arras of land from Jyte 1253, for possession of which with wasilat they sue, and state that respondent's farmer, Kishennath Majoomdar, sued Syed Kasoo, a ryot of mouzah Sengraoond, for rent, which was dismissed

by the moonsiff, on the 11th July 1840, on account of disputes about boundaries, and he was referred to the civil court, and that respondent has not conformed to that order; that the respondent says his boundary is a *butt* tree, which cannot be a boundary, and if the land has been fraudulently included in the chittas of the butwara between respondent and his shareholders, it cannot affect appellants, as they were not parties, or present at the measurement.

Respondent replies that the boundary is a *butt* tree and a road to the east and west of it, on the north of Balwakandee to the Mookoorca road and to the Soorea nuddee, and that to the south of the *butt* tree is the land regarding which orders were passed under Act IV. 8140; that there is no mun tree and road to the south of Balwakandee; and that the ameen in the butwara business was 6 or 7 years in the mofussil, and if their lands had been encroached upon, appellant would have complained to the collector, and also the ryots; that the durijaradar sued without his knowledge, and the suit was dismissed as he had filed no proofs of the arrears or of his durijara.

Appellants denied that there was any *bater* as boundaries on both sides of the *butt* tree, and that the durijaradar admits the mun tree, that the beel Agrail measured in that butwara case was to the south of our boundaries, and after this suit was instituted the respondent cut down the mun tree.

Respondent rejoined that in the case under Act IV. only a little land was in dispute near the *butt* tree, therefore it was unnecessary to state the whole boundary of the mouzah, that the durijaradar said a mun tree was the boundary and there is one on his *bater*, and if he had cut down the mun tree, appellants would have petitioned the court to attach the property in dispute.

The principal sudder ameen dismissed the claim; on what grounds it is unnecessary to state, as the point for decision is, has the suit been decided in conformity to the rules laid down by the law? It has not, no proceedings having been held under Sections 10 and 12, Regulation XXVI. 1814. The only roobukaree at all like that required by Section 10, is a roobukaree stating that as it is necessary to enquire which village the land belongs to, and in whose possession, and for what period, and what is the boundary between the estates, an ameen is appointed, &c. The suit is accordingly remanded for trial by the principal sudder ameen, who will conform to the rules laid down in the sections quoted.

THE 28TH JUNE 1850.

No. 60 of 1849.

Appeal from the decision of Nurhurree Seromonee, Principal Sudder Ameen of Zillah Mymensing, dated the 8th June 1849.

Seebdeen Misser, (Defendant,) Appellant,

versus

Genda Debia, (Plaintiff,) Respondent.

RESPONDENT states her deceased husband was an 8 annas shareholder in a kotee at Nusseerabad, the business of which was carried on by the appellant as their gomashta in his and other names, and that disputes having arisen between the shareholders and the appellant, the matter was referred to arbitrators at Dacca, before whom he filed a list of outstanding debts and a petition, agreeing that if he had realized any of those debts and not brought them to credit or given a receipt on the documents, on its being proved that he had realized them, he would be liable, on which the arbitrators' decision was founded on the 11th Aughun 1253. In the khata and chittahs given them by the appellant there is entered in the khata for 1251, as due from Hurchunder Chowdry, rupees 2595-1-15, which being demanded from the Chowdry, he said the appellant had sued and received from the civil court rupees 2121, on the 29th Sawun 1252, which, with interest, amounts to rupees 2986-3, to recover one-half of which she now sues.

Appellant replied that the decrees for which the Chowdry had deposited rupees 2121, were not for the money entered in the khata of 1251, and were on account of two loans made in 1246 from his own money, and that in the arbitration case upwards of 6000 rupees was declared due to him.

Respondent replied that appellant carried on business in his and other names on their account, and that he does not say there is still anything due from the Chowdry, and that the rupees 6045-5, declared due to the appellant in the arbitration case, was founded upon the accounts adduced by him.

The principal sudder ameen decreed the sum claimed, as it was proved that rupees 2595-1-15 was entered in the khata and chittas given by the appellant to the partners at the time of the arbitration, as due from Hurchunder Chowdry, and the business and documents of the kotee being in appellant's name he had sued the Chowdry and realized the money sued for, and although it was very necessary for appellant to prove that the money was his own and the transaction a separate one from that of the kotee, he has adduced no such proofs, nor has he stated whether the money is still due from the Chowdry or not, and there is great doubt of the appellant having any separate business of his own, for it is evident he employed his own money with that of the partners of the kotee and received the interest of it, and after disputes arose with the partners got a

decree for it in the arbitration case, and although the sum which he sued for and realized from the Chowdry does not agree with that in the khatta and chittas, that arises from the appellant's fraud, who did as he pleased, as the respondent's partners did not manage the affairs of the kotee, and the settlement at the time of the arbitration was made on his khata and chittas without comparing accounts with the debtors.

In appeal, it is urged that the chittas the principal sudder ameen refers to are not the chittas of the 11th Aughun 1253, and are not witnessed or approved by the arbitrators, but are chittas of 10 months before the date of the arbitration decision, and that the respondent has not sued the Chowdry, and that the chittas were not translated into Bengalee, and therefore the principal sudder ameen was not fully acquainted with them.

In reply, it was stated that the chittas were proved in the case of Mothoorapershad to be in appellant's handwriting.

The point for decision is, did the money lent to Hurehunder Chowdry on bonds in appellant's name, and which he has realized by suit belong to the kotee of which the respondent's husband was an 8 annas shareholder, or was it the private property of the appellant? Appellant, the gomashta of the kotee of which the respondent was a partner, had the sole management of it, and lent money in his own name on account of the kotee; and in the chitta and khata delivered by him to the partners in the arbitration case, the sum of rupees 2595-1-15 is entered as due from Hurehunder Chowdry, and it is admitted that he sued the Chowdry for and received from the civil court rupees 2121, which he now asserts was his own money lent to the Chowdry, of which he has adduced no proof, nor does he say that the sum entered in the khata and chitta is still due from the Chowdry, and it is beyond belief that the gomashta of such a kotee, if he had a private business of his own, would not have kept a khata. He also asserts the chittas adduced by respondent are not the chittas of the arbitration, but he prepared those chittas, and doubtless had a copy of them which he has not produced. With regard to the sums entered in the khata and chitta and sued for and realized from the Chowdry not tallying, that is not surprising, for, as the principal sudder ameen justly remarks, it was entirely in his power to enter what sum he thought proper therein. According to the terms of the arbitration decree he is liable for any sums which he has realized which have not been credited to the kotee; and having failed to prove either that the money was his own or that it been credited to the kotee, he is liable for the sum claimed, and accordingly the decree of the principal sudder ameen is affirmed, with costs.

ZILLAH NUDDEA.

PRESENT: J. C. BROWN, Esq., JUDGE.

THE 6TH JUNE 1850.

Case No. 70 of 1849.

*Regular Appeal from a decision passed by Baboo Gourhurree Bose,
Moonsiff stationed at Bagdaha, on the 17th of July 1849.*

Ramdhun Dey and others, (Plaintiffs,) Appellants,

versus

Jaichunder Rai Chowdhree and others, (Defendants,) Respondents.

THE plaintiffs in this case are ryots, and the defendants the zemindars.

The latter instituted proceedings under the provisions of Regulation VII. 1799, against the former, for rent for 1250, according to a kubooleut, dated the 15th of Bysakh 1223 B. Æ., corresponding with 26th of April 1816, in which the quantity of land is mentioned as being one beegah and an half, and situated within certain boundaries therein specified and declared. The ryots offered no opposition, but submitted to the demand, (fearing no doubt to oppose the zemindars.) The following year similar proceedings were resorted to by the zemindars; when the ryots contested the demand and instituted a suit in the moonsiff's court for the reversal of the summary decree. The moonsiff decided against them, on the grounds that they had tacitly acknowledged the justice of the summary decree given against them for 1250. They then instituted a regular suit, to retain possession of the lands they had in their occupancy, in quantity 13 cottahs, at an annual rent of Sicca rupees 2, 8 annas. The moonsiff rejected their suit and decreed it against them, because the collector had summarily decreed in favor of the opposite party, for Sicca rupees 6, and for one beegah and an half. They appealed, and the principal sudder ameen, on the 30th December 1848, considering the moonsiff's decision erroneous, with the judge's concurrence remanded the suit to the moonsiff's file, with instructions to try the plaintiffs' claim and decide it on its merits. The moonsiff has again, with a thorough investigation,

dismissed the plaintiffs' claim, and on very unsatisfactory grounds. Their claim is founded on a pottah alleged to have been granted to their ancestors by Chundee Churn Rai, then proprietor, dated the 7th of Assin 1195, corresponding with 20th of September 1788, in which the quantity of land is stated to be 13 cottahs, and the jumma Sicca rupees 2-8. The moonsiff states the pottah is not proved, because the witnesses to it are dead; but he has not once thought of making any local investigation regarding the identity of the boundaries of the lands, which are clearly and distinctly declared in the pottah filed by the plaintiffs (appellants) and the kubooleut filed by the defendants (respondents) as being the same.

There would have been no difficulty in his ascertaining the actual quantity of land within the boundaries which both parties are agreed upon, and within limits both parties allege that their claim exists. The plaintiffs do not claim any more land than is within those limits, for which they state they have always paid old Sicca rupees 2-8.

The defendants cannot claim rent for more land than is within the boundaries stated in the kubooleut on which they found their demand for rent. The ameen who has measured the lands according to the orders of this court dated the 23rd of February 1850, has reported the quantity of land within the boundaries defined in the pottah and kubooleut to be $8\frac{1}{2}$ cottahs. These are points, however, which, though indicated by the principal sudder ameen's proceedings above alluded to, as being necessary for investigation, the moonsiff has not inquired into; and until he goes into the rights of the case and decides it on its merits, his investigation must be considered incomplete and his decision in consequence faulty. I do not find that the parties disagree very materially regarding the rate of rent. At the rate the plaintiffs claim a right to pay for 13 cottahs, it amounts to nearly rupees 3-14 per beegah, and the defendants demand 4 rupees. The only difference is the quantity of ground, that is, whether it is within the defined boundaries, in fact $1\frac{1}{2}$ beegahs according to the defendants' allegation, or if it is more or less 13 cottahs within the same limits as set forth by the plaintiffs.

As I find the moonsiff has not investigated the case according to the instructions conveyed to him by the proceeding of the principal sudder ameen, and for the above reasons that his proceedings are incomplete and his order defective, it is therefore ordered, that the suit be remanded to its former place on the moonsiff of Bagdaha's file, and that, with reference to the above remarks, he do re-investigate the plaintiffs' claim and decide it on its merits. The stamp fee for the institution of the appeal to be refunded to the appellants, and any other costs or expenses they may have been put to, in appealing, will be awarded, as may be just, when the case is disposed of.

THE 7TH JUNE 1850.

Case No. 46 of 1850.

*Regular Appeal from a decision passed by Baboo Goopeenath Bose,
Moonsiff of Santipore, on the 31st January 1850.*

Ramgopal Mookoorjea, (Plaintiff,) Appellant,

versus

Nusseeram Rai, (Defendant,) Respondent.

THE plaintiff (now appellant) prosecuted to recover the sum of rupees 200, principal, and rupees 88, interest, from the defendant (respondent,) on account of a bond alleged to have been written and executed by him, in the presence of the subscribing witnesses, on the 2nd Pooos 1251, corresponding with 15th December 1848, and which was payable in all Phalgun 1252, corresponding with the latter part of February and the first portion of March 1846.

The defendant repudiated the plaintiff's claim, declared it to be false, and brought against him at the instigation and through the enmity of Oomeish Chunder Roy, usually known by the cognomen of Motee Baboo of Santipore.

The moonsiff, instead of confining himself to the decision of the plaintiff's suit on its merits, has adopted the defendant's line of defence, as his grounds for disposing of the case; and although no proof has been furnished by the defendant in support of his, or in refutation of the plaintiff's allegations, he has recorded his being satisfied that the plaintiff's demand is a false one, and his conviction that Oomeish Chunder Roy is at the bottom of the whole business.

After a careful perusal of the record of the moonsiff's proceedings, the evidence of the witnesses who have been examined in support of the prosecution, and the appellant's petition of appeal, I consider the moonsiff's dismissal of the plaintiff's suit to be grounded solely on his suspicions regarding Oomeish Chunder Roy having actuated the plaintiff to prefer the claim. There is no evidence in the case on which such suspicions can be admitted, and a civil suit cannot be dismissed merely on suspicions of its being false. It was the moonsiff's duty to record his reasons for discrediting the plaintiff's bond (his buhee khattah he did not call for) and the evidence of the witnesses, who gave their testimony in favor of the plaintiff's demand, (and such reasons may no doubt be evident) without being influenced entirely by a morbid suspicion of Oomeish Chunder Roy's being mixed up in the case, and confining himself entirely to that line of argument.

Considering the moonsiff's decision to have been passed without sufficient investigation of the merits, and grounded on an assumption erroneous and irrelevant with reference to the points at issue, it is therefore, as directed in Clause 2, Section 2, Regulation IX. 1831, necessary for the removal of this defect that the suit should be remanded to the moonsiff's file for revision.

It is therefore ordered, that the original record of the case be returned to its former place on the Santipore moonsiff's file, and that with reference to the above remarks he revise, and, if necessary, re-investigate any points which may appear necessary, in conformity to justice and to the regulation.

The stamp fee for instituting the appeal is to be refunded in the usual mode to the appellant, who is to pay any costs or expense he may have incurred in preferring this appeal, and when the case is decided those costs will be awarded, as may appear just.

THE 7TH JUNE 1850.

Case No. 78 of 1850.

Regular Appeal from a decision passed by Baboo Shamulpran Moostofee, Moonsiff stationed at Handrah, on the 17th April 1850.

Iswur Chunder Biswas, (Plaintiff,) Appellant,

versus

Chunderkanth Bonnerjea, (Defendant,) Respondent.

THIS suit was brought in the moonsiff's court for the reversal of a summary decree, passed in favor of the defendant by the assistant collector, for the sum of 54 rupees, on account of rent of 70 beegahs, 17 cottahs of land, which both parties lay claim to under the following circumstances.

The plaintiff states that the parcel of land, for which the defendant claims and has obtained a summary decree in his favor, from the assistant collector, is not his property at all. That the land in question is part and portion of a muhal, which was resumed on account, and permanently settled for with the maharajah of Nuddea, which muhal he (the plaintiff) holds in durputnee from the maharajah's putneedar and are his mal lands.

That when the defendant's (respondent's) lakhiraj lands were attached by the deputy collector for assessment, and brought under settlement, the ameen who was deputed to measure the lands included this land, which he nominally measured, but did not go near, as a part of the defendant's lakhiraj lands, but in the plaintiff's occupancy. The plaintiff gave in a petition to the collector stating his claims to the land and having had no notice taken of it, he appealed to the commissioner, who remanded the settlement papers to the collector for revision. The plaintiff further urges that, until a settlement is confirmed by the commissioner, it is not complete, and that it was never contemplated by the law that, land which was once measured and permanently settled as belonging to one muhal, should be re-attached and re-settled as belonging to another.

The defendant grounds his claim to the rent on the settlement concluded with him by the deputy collector on the 29th April 1848, who gave him an ummul dustuk, by which he was authorized to collect his rents from the commencement of 1254 B. S., and it is for

the rent of that year that the assistant collector gave the decree for the reversal of which this suit has been brought.

The moonsiff, in dismissing the plaintiff's suit, has been guided by the measurement papers of the ameen, who was deputed by the deputy collector to measure the defendant's lakhiraj lands, from which it appears that the portion now disputed was included. The plaintiff, however, avers that those very lands were measured and included in the settlement made with the rajah, and that the fact can be proved by an inspection of those papers, and comparing the dags or distinguishing marks with the lands, when it will be found that they have been twice measured, which is contrary to law and justice.

I am of opinion that the moonsiff, instead of grounding his decree on the proofs exhibited by the defendant, should have called on the plaintiff to prove his allegations first, and then he would have had a clearer insight into the merits of the case, whereas he has been guided entirely by the exhibits of one, and that the opposing party; and until he decides the plaintiff's case on its merits, his decision cannot be any thing but imperfect. With reference to the foregoing remarks it is ordered, that this suit be returned to its original place on the moonsiff's file, and that he either proceed to the spot himself, or depute the ameen of his division, to compare the measurement papers of both parties with the land, and make any other local investigation which may appear necessary, and then to decide the plaintiff's suit on its merits. The value of the stamp for preferring the appeal is to be refunded to the appellant, who is to pay any other costs he may have incurred in preferring this appeal, and when the suit is ultimately disposed of, the costs will be adjudged as may appear equitable.

THE 7TH JUNE 1850.

Case No. 79 of 1850.

Regular Appeal from a decision passed by Baboo Shamulpran Moostofee, Moonsiff stationed at Handrah, on the 17th of April 1850.

Iswur Chunder Biswas, (Plaintiff,) Appellant,

versus

Chunderkanth Bonnerjea, (Defendant,) Respondent.

THE facts and circumstances and the matter in dispute, as well as the grounds for the appeal in this case, are the same as those set forth in case No. 78, decided this day, with this difference that the rent claimed in that case was for 1254 B. *Æ.*, and this is for 1255 B. *Æ.* The same order is therefore applicable.

THE 13TH JUNE 1850.

Case No. 141 of 1847.

Regular Appeal from a decision passed by Baboo Ram Lochun Ghose Rai Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 16th September 1847.

Munjurree Munnee Dossia, as guardian, and Chundur Coomar Pal Chowdhree, himself and as guardian of Purshun Coomar Pal Chowdhree, and others, (Defendants,) Appellants,

versus

Seeraj Mundul, Moqueem Mundul, and Rutteeb Mundul,
(Plaintiffs,) Respondents.

SUIT for retaining possession of 8 beegahs and 5 cottahs of land, as lakhiraj for religious purposes, and the value of paddy forcibly seized and carried away. The whole value estimated at Company's rupees 215.

The plaintiffs sued under the following circumstances :—

In chukla Srinuggur, in mouzah Manick Cole, all the lakhiraj or rent-free lands set apart for Mahomedan religious purposes, are theirs by right of inheritance. In 1250, Rajoo Mundul, the deceased father of Seeraj and Moqueem, and grandfather of Rutteeb Mundul, cultivated 8 beegahs and 5 cottahs of the said land, and raised a crop of paddy, and in the month of Poos in that year reaped it, and placed it on the place where it was to be beaten out, (called the khirman or thrashing floor,) when Ramdoss Mookoorjea, the gomashtha of the zemindars, who are amongst the defendants, attached and seized the paddy for arrears of rent, and placed it in the custody of Jadob Sirdar, a servant of his, and, on the 21st of Phalgun of the same year, the said gomashtha and Jadob Sirdar, together with Azeem, Hadee, and others thrashed the paddy out and took it away, on which account the said Rajoo Mundul instituted a suit in the Ranaghat moonsiff's court in Bysakh 1251, for the value of the paddy and for possession of the land, when the proprietors and others denied carrying off the paddy, and alleged that the land was not rent-free, but mal, or land paying rent, and that it was the jummaie land of Azeem and Hadee Mundul. The moonsiff nonsuited the plaintiff, because he had not calculated his suit at 18 times the value of the produce, and also because the land being rent-free was disputed. As the taidad of the plaintiffs, No. 18999, of the year 1202 B. Æ., is filed, although the plaintiffs still hold possession, yet as the defendants have taken away the paddy and the former suit was nonsuited, their right to hold the land rent-free may be doubted, and they accordingly instituted their suit under the regulations in force.

The zemindar defendants denied the lakhiraj lands claimed by the plaintiffs, and stated that of the 8 beegahs and 5 cottahs, claimed by them, 6 beegahs and 5 cottahs were assessed lands occupied by

Azeem Mundul, and the remaining 2 beegahs by Hadee Mundul. They also denied having removed the paddy. Azeem and Hadee Munduls filed their answer confirming that of the proprietors.

The principal sudder ameen referred the case to the collector for report under the provisions of Regulation II. 1819. The collector repudiated the plaintiffs' claim to hold the lands rent-free, stating in his report that the entry in the registry books of his office was suspicious, because where the plaintiffs' taidad for Manick Cole was entered, some alteration had been made in the name of the village. The collector would not pass any other opinion on the validity of the plaintiffs' documents, nor did he examine any witnesses.

The principal sudder ameen, after the receipt of the collector's report, examined the witness of both parties, and had local enquiries, regarding possession and as to who cultivated the land, made by an ameen, and neither party offered any objections to the investigations or report made by him.

The principal sudder ameen, after a consideration of the evidence before him, recorded his opinion in favor of the plaintiffs' claim on the following grounds:

First.—From an inspection of the copy of the taidad, No. 18999, for 1202 B. *Æ.*, filed by the plaintiffs, and the original register of the collector's office, it is quite clear that 41 beegahs and 8 biswas of land in mouzah Deepchunderpore, 6 beegahs in mouzah Belghuria, and 12 beegahs in mouzah Manick Cole, are entered, as *lakhi-raj*, for Mahomedan religious purposes and the hereditary right of the plaintiffs, and the objection that has been made to the plaintiffs' taidad, on account of its being omitted in the English register, is of no weight, because on an inspection of the registers sent from the collector's office, Nos. 35 and 36, it is clear that all the taidads from 18992 to 19000, are all omitted, which the collector attributes to an act of fraud of his ministerial officers, and although the collector in his proceedings, dated the 4th of May 1846, has declared the rent-free lands claimed by the plaintiffs to be not proved solely "because in the original register where the mouzah of Manick Cole is entered, there are erasures, and the Bengalee register does not agree with the English, but it is quite evident from looking at the register itself that, where mouzah Manick Cole (in which the lands the subject of this suit are situated) is entered, there is no erasure of any sort, only where the lands of mouzah Belghuria are entered three letters B, l, g have the mark of a pen drawn across them. It is impossible to understand on what grounds the collector entered in his rooidad that, where Manick Cole was registered, there were erasures, as that is contrary to the fact, and the plaintiffs' right to lands situated in Manick Cole cannot be affected thereby; for had it been true, the circumstances would have been mentioned in the copy of the taidad, which the plaintiff obtained from the collector's

office on the 2nd July 1843. It is therefore highly probable that the defendants caused the books to be altered after the dispute with the plaintiffs commenced.

Second.—The right to and title in the lands in dispute, of the plaintiffs, and their being in possession of the land rent-free, has been clearly proved by the evidence of ten witnesses, and the evidence of the defendants' witnesses is insufficient to shake their testimony.

Third.—From the testimony of the plaintiffs' witnesses and the local investigation of the ameen, it is satisfactorily proved that the plaintiffs had cultivated the 8 beegahs and 5 cottahs of land in Manick Cole, and that the defendants had wrongfully carried off the crop.

The principal sudder ameen accordingly passed a decree in favor of the plaintiffs for the full amount of their claim, with costs and interest.

The appellant has objected to the above decree for the following five reasons :

First.—That the land is the plaintiff's lakhiraj, cannot be established, without a production of the sunnud under which they claim it. The production of a taidad is insufficient. Further, that by the Regulation of the Government, when a suit is sent to the collector to report whether the claim to hold the lands rent-free is admissible or not, it is incumbent on the parties to produce before the collector their sunnuds together with any other proofs they may have, and the collector, after having duly deliberated on the proof adduced, and having examined the records of his office, is to decide if the lands claimed are the claimants' rent-free lands or not. The opponents too are to be heard and their documents, witnesses, &c., are to be examined, in order that the collector may be able to take a clear view of the case and report accordingly to the court, and that his report so made is to have full weight with the court. That in this case the collector, for the reasons given by him, has declared the plaintiffs' claim inadmissible; and the principal sudder ameen erred in giving a decree in their favor.

Secondly.—That it is clear the appellants did not cause the falsification of the register book after this suit was instituted, as it would have been just as easy to have had the part of the taidad relating to Manick Cole rendered suspicious as that relative to Belghuria.

Thirdly.—By the regulations of Government, if a landed proprietor can prove that he has received the rents for one year for certain lands, that land cannot be afterwards claimed as lakhiraj; that in this case they have proved, by documentary as well as oral evidence; that they have been for a continuation of years receiving rent for the disputed lands, and the witnesses too have given their testimony in the plaintiffs' favor, all interested in the issue of the case, and

from the way in which they replied to the defendants' interrogatories regarding the collections of the rents, showed that they had been well tutored in what they were to say.

Fourthly.—That the appellants' witnesses clearly proved that the lands claimed by the respondents were assessed, and were in cultivation by Azeem and Hadee Munduls, and that those persons had only reaped their own crops. The principal sudder ameen, however, rejected this evidence, and preferred that given by the witnesses for the prosecution.

Fifthly.—That the local investigation made by the ameen was *ex parte* and unworthy of credit, and that another ameen should have been appointed, but the same ameen was deputed to make further investigations, and his second report was as might be expected confirmatory of the first he made.

JUDGMENT.

After duly considering the principal sudder ameen's reasons for deciding this suit in the plaintiffs' favor, and the objections made by the appellants to the decree, I am of opinion that the irregularity and illegality of the collector's investigation are so apparent, that it was incumbent on the principal sudder ameen to have remanded the suit to him for further and fuller investigation and report. In cases like this, the collector should, under the provisions of Section 30, Regulation II. 1819, have taken all the evidence of every description either party had in their power to furnish, and then to have recorded his final judgment on the case, after full investigation, in the same manner as in cases in which he would have himself proposed to assess lands on account of Government, and then, under Clause 6 of the section and enactment quoted, he should, on closing his proceedings, transmit them with all the documents therein referred to the court, recording his sentiments in the case as prescribed in Sections 20 and 21 of the Regulation above mentioned. Instead of acting according to the law, he held a short proceeding in which he made a mistake, and on that mistake he grounded his opinion that the plaintiffs' claim was inadmissible. He had no proof of any kind before him, either for or against the plaintiffs, whose claim he repudiated solely on the grounds that the entries in his own registers were suspicious.

The investigation of the merits of the case by the principal sudder ameen, I consider insufficient, because in the first reason he has given for decreeing the plaintiffs' claim in their favor is that the taidad filed by them was not disproved or even open to suspicion, as the collector declared it to be. He has recorded that the collector's sentiments had been given on bad and incorrect data; but that was no proof that the taidad was correct, especially in the absence of any sunnud. The principal sudder ameen should have given his reasons for rejecting the evidence for the defence. It is not sufficient merely to state, as he has at the close of the second heading of

his judgment, that the evidence given for the defence is not as good as what was adduced for the prosecution.

It is ordered, that this suit be returned to its former place on the principal sudder ameen's file, and that, with reference to the above remarks, he remand it to the collector to make a legal investigation on the merits of the plaintiffs' claim and the defendants' objections, and that when it is returned by the collector, the principal sudder ameen do weigh the allegations of both parties, with the evidence they may furnish, and that when he records his reasons for admitting the pleas of one party, he do also record what are his grounds for rejecting those of the other side.

The amount of the stamp paper for preferring the appeal is to be returned to the appellant, who is at present to pay any costs he may have incurred, and when the case is disposed of they will be awarded as may appear just. The respondent Seraje Mundul having appeared by vakcel without having been summoned, is to pay his own costs.

THE 14TH JUNE 1850.

No. 44 of 1850.

Regular Appeal from a decision passed by Baboo Gopeenath Bose, Moon-siff stationed at Santipore, on the 29th of January 1850.

Ranigopal Sircar, (Plaintiff,) Appellant,

versus

Deenonath Dey, (Defendant,) Respondent.

THE plaintiff sued to recover Company's rupees 147, 15 gundahs, due to him on a bond, dated 17th Jyte 1249 B. \mathcal{A} ., corresponding with 29th May 1842.

The defendant denied the claim, and alleged that the whole case is one of fraud, and preferred through enmity and at the instigation of the zemindar. That at the time the bond is said to have been executed by him, he had nothing to do with any mercantile transactions, they were conducted entirely by his elder brother, who is now dead. That he knows how to write, and is a monied man, so that if he had occasion to borrow money, giving his bond for it, it would have been most natural for him to have written the bond himself, and not to have employed another, but as it was he had no occasion for any funds besides his own.

The parties have both called witnesses in support of their allegations, and the moonsiff has discredited their evidence, on the grounds of their being men of an inferior and low class, and that their testimony is unworthy of credit, because there are reasons for supposing that they are in the habit of giving evidence, also that after a lapse of about seven years they have been able to enter into the minutiae of the transaction. He has admitted a great deal of extraneous matter quite irrelevant to the proving of the bond, and grounded

solely on his own suspicions, which has only had the effect of making his decision very prolix, and not in any way proved by any evidence produced before him.

The plaintiff, as a matter of course, is dissatisfied with the decision, but has not advanced a single good reason for its reversal.

I am of opinion that the plaintiff's (now appellant's) claim is not proved. There is only one witness who can prove the bond, and he is not a credible witness, as he says he was expecting some employment from the defendant in which he was disappointed, and this man says *he* wrote the bond and the names of all the witnesses as they could neither read nor write. It has been ruled by the Court of Sudder Dewanny Adawlut on a petition, No. 436 of 1846, the order dated the 31st of August 1847, that there is no Regulation or Act which declares the evidence of persons unable to read or write inadmissible, but by Section 15, Regulation III. 1793, a bond must be proved to have been executed in the presence of two credible witnesses to the satisfaction to the court. The two first witnesses for the prosecution admit that they have repeatedly given evidence in other cases, and as there is no ostensible reason for their having all met from different places in the neighbourhood of Santipore, at the same time, to witness the bond produced in this case, nor can they show good cause for having done so, it is to be feared they belong to a class of persons at Santipore, who gain a livelihood by giving false evidence. Their answers to questions put to them are too similar to allow of any impression, but that they had been lately tutored when they gave their evidence. They spoke with the greatest certainty and exactness to small minutiae, such as the colour of the bag out of which the rupees were said to have been taken, the sort of stamp paper, the situation of the parties while the alleged transaction took place, though it was stated to have occurred nearly seven years before, and yet they allowed they could not remember what happened a few months previously. The similarity of the evidence is easily accounted for. The person who was said to have written the bond, and one of the persons whose names appear as witnesses to it, were examined three days before the other two witnesses were in attendance. The plaintiff, his vakeel, or mookhtear, having ascertained what questions were asked and answers were given on the 24th of July 1849, had plenty of time before the 27th of that month, when they produced the other two witnesses, to tutor them so well that they gave, as was no doubt intended, evidence exactly similar to that which had been previously given.

As I do not consider the witnesses who have given their evidence in the plaintiff's favor credible, I am of opinion the bond is not proved, and therefore see no reason to pass a different decision to that given by the moonsiff.

The evidence for the defence is as bad as that for the prosecution, and though the defendant has urged in his reply to the plaint that

the suit was brought against him through enmity on account of his having complained against the plaintiff in the foudjaree court, he appears to have forgot that the date of the bond was about five years prior to his complaint in the criminal court.

Ordered, that the appeal be dismissed, with full costs.

THE 17TH JUNE 1850.

Case No. 52 of 1850.

Regular Appeal from a decision passed by Baboo Gungachurn Sircar Moonsiff of Hanskhalee, stationed at Burnuggur, otherwise called Oolah, on the 25th of February 1850.

Ukber Ullee Shah and others, (Defendants,) Appellants,

versus

Pyarce Mohun Mookoorjea and others, (Plaintiffs,) Respondents.

THE plaintiffs sued the appellants, together with a gowalla named Oordhub Ghose *alias* Oordhub Chunder Ghose, for a bond debt, amounting with interest to Company's rupees 147, 13 annas.

The appellants repudiated having ever had any pecuniary transactions with the plaintiff, and stated that Oordhub Ghose is one of the plaintiffs' servants, and his name has been mixed up with theirs, solely to implicate them, owing to former enmity.

Oordhub Ghose has filed an answer, acknowledging the justness of the plaintiff's claim, and that he executed the bond and borrowed the money.

The moonsiff, at the request of the defendants, (now appellants,) called on the plaintiff to produce his account books, which the plaintiff refused to do, and the moonsiff accordingly proceeded to dispose of the case, and on the grounds of the admission of the defendant Oordhub Ghose, and the deposition of the witnesses, decreed the plaintiff's claim in his favor.

I am not satisfied with the proof adduced against the appellants, nor with the remaining defendant's confession of judgment as far as he implicates the appellants; and I am of opinion, from the circumstance of the respondent having refused in the court of first instance, and again in this court, to produce his account books, that the claim against the appellants is false and unfounded, and that Oordhub Ghose's name has been introduced in the bond solely with the view of injuring the appellants, by his confessing and thus obtaining a decree against the appellants, whom the respondent would (if the moonsiff's order were enforced) take out execution against and allow Oordhub Ghose to go at large on a plea of insolvency. No reason has been shown by the plaintiff, for the appellants and Oordhub Ghose having joined in taking up the alleged money and executing a joint bond. Had they any mercantile transactions together, it could easily have been proved; and as the plaintiff is said to be a monied man, and he does not deny having account books, but refuses

to produce them in court, there are grounds for supposing that no mention would be found in them of this alleged debt. As Oordhub Ghose has, however, confessed judgment, there is no objection to the plaintiff realizing the amount of his claim from him.

It is accordingly ordered, that, as far as the appellants are implicated in the moonsiff's decision, their appeal is decreed in their favor, with the costs they have incurred in both courts, with interest thereon, which is to be paid by the respondent, who is to pay his own costs likewise.

THE 17TH JUNE 1850.

Case No. 67 of 1850.

Regular Appeal from a decision passed by Baboo Gourhuree Bose, Moon-siff stationed at Bagdah, on the 16th March 1850.

Ramjadoo Rai and others, (Plaintiffs,) Appellants,

versus

Sonatun Chung, (Defendant,) Respondent.

THE appellants sued the respondent for the sum of 28 rupees, 8 annas, 15 gundahs, due on a bond, dated the 22nd Jyete 1254. The defendant (respondent) denied the debt, and pleaded an *alibi* on the day on which the bond was dated, which plea the moonsiff has rejected after recording the evidence in support of it. He has, however, after taking the evidence of two witnesses in support of the bond dismissed the plaintiff's suit, merely on the ground that the signature on the bond, and which is alleged to be the handwriting of the defendant, does not agree exactly with the defendant's signature on other papers in the nuthee, nor with the signature of the defendant, written in the moonsiff's presence on the day of the decision of the case. He has merely referred to the witnesses having given evidence, but has not given any opinion on the evidence of the plaintiff's witnesses nor recorded any grounds for rejecting it. And this is contrary to the practice which ought to prevail invariably when documentary evidence is contested, the proof of which lies on the person producing it, as similarity or the contrary in a signature is not alone a sufficient ground for barring a claim when oral evidence is produced, unless on a decision on the merits of a case, the evidence may be found unworthy of credit, and then the autography, whose signature may be questionable, may be taken into consideration, but only in the light of collateral proof.

Ordered, that this suit be remanded to its original place on the moonsiff's file, who, with reference to the foregoing remarks, is to dispose of the plaintiff's claim on its merits.

The value of the stamp paper for preferring this appeal is to be refunded. Both parties are to pay any costs they may have incurred, and they will be awarded as may appear just when the case is finally disposed of.

THE 17TH JUNE 1850.

Case No. 84 of 1850.

Regular Appeal from a decision passed by Baboo Gungachurn Sircar, Moonsiff of Hanskhalee, stationed at Burnuggur, otherwise called Oolah, on the 26th of April 1850.

Oomeish Chunder Mullick, (Plaintiff,) Appellant,

versus

Kader Sheikh and others, (Defendants,) Respondents.

THE plaintiff sued Kader Sheikh and others for Company's rupees 31, 12 annas, 15 gundahs, as being due to him on a bond.

The defendant Kader Sheikh appeared by vakeel on the 20th June 1849, but gave no answer. On the 7th of January 1850, the witnesses for the plaintiff were examined, and then the said defendant gave in a petition, showing that the evidence of the witnesses was unworthy of credit.

The moonsiff made enquiries regarding the identity of the witnesses, and he discovered that one who had given his evidence regarding the serving of the proclamation had stated his residence to be a village called Hidjee, and when he came as witness to prove the bond he stated that he lived at Ranaghat. Regarding Gobind Tantee the moonsiff, by local investigation, discovered that there was no such person residing at Nasurah. The witnesses were illiterate, low caste persons, one a Buheleah (or swine-herd) caste, and the other Tantees (or weavers,) and they could not recognize nor prove the bond in any way. The plaintiff, on finding that the proof he had offered was insufficient, filed a petition on the 16th of April, in which he stated he would give further proofs, which the moonsiff gave him permission to do. On the 26th of April 1850, the moonsiff held a proceeding, and asked the vakeel of both parties if they had any further proof to bring forward, and being answered in the negative he proceeded to decide the case.

His grounds for dismissing the suit were that the witnesses were shown to be utterly unworthy of credit, and that there was not in consequence any proof of the bond upon which the plaintiff founded his suit.

The appellant has not shown any good or sufficient reason for any alteration being made in the decree, and there is not, therefore, under the provisions of Clause 3, Section 16, Regulation V. 1831, any occasion to summon the defendant.

Ordered, that the appeal is dismissed, and the moonsiff's decree is confirmed, notice of which is to be given to the moonsiff as provided for in the enactment above quoted.

THE 29TH JUNE 1850.

Case No. 146 of 1847.

Regular Appeal from a decision passed by Baboo Ramlochan Ghose Rai Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 27th of August 1847.

Pran Kishen Pal Chowdhree and others, (Plaintiffs,) Appellants,

versus
Messrs. Hills, White and Co., (Defendants,) Respondents.

THE plaintiff sued to recover rent from the defendants for the following lands for 1250 B. Æ . :

	Co's.	Rs.	As.	Gs.
For lands attached to Arungsursah factory,.....	47	2	8	
„ 178 bg., 7 ct. waste lands in the same village, 190	190	3	9	
„ 41 „ 15 ditto ditto in Majdeah,	44	8	10	3
30 „ 10½ ditto ditto in Badlungee,				
157 13½ ditto ditto Kalludeh,				
115 2½ ditto ditto Luckhupoor,				
4 1½ ditto ditto Baludangah,				
„ 8 ditto ditto Maloongatche,				
307 15½ at 1 Sic. R. per beegah,	328	5	18	
Total, Co's. Rs.	510	4	5	3

The defendants acknowledged having had, in 1250 B. Æ , 178 beegahs 7 biswas in Arungsursah, and 37 beegahs in mouzah Majdeah in their cultivation, the rent of which at 1 rupee per beegah was rupees 215, 5 annas, 12 gundas, and rupees 47, 2 annas, 8 gundas, the fixed rent of their factory lands, making in all rupees 262, 8 annas, which sum they paid to Pran Kishen Pal Chowdhree himself on the 27th of February 1843, by including it in a draft drawn by them on the house of Fergusson Brothers and Company, and they deny having had any thing to do with the other lands mentioned in the plaint.

The plaintiff rejoined that the lands that the defendants had in cultivation in 1250 B. Æ . had been regularly measured as he could prove, and that the draft alluded to by the defendants was in payment for rents for 1249 B. Æ .

The principal sudder ameen, after a very patient investigation, not only of the proofs exhibited before him, but by the deputation of different ameens, four times over, for measuring the lands and making local investigations, decided that the defendants' allegation regarding the quantity of land was correct, but rejected their plea of having paid the amount, that point not having been established and being in itself very improbable. He therefore decreed only the portion of the claim that was admitted, and dismissed the remainder of the suit.

The plaintiffs, in their appeal, make objection to the report of the last ameen; but on a reference to the record it appears that they themselves obstructed his proceedings by not allowing him to measure, saying the lands had been measured three times, and there was no occasion to do so again.

This case is almost parallel to case No. 100 of 1846, and No. 47 of 1847, decided by me on the 24th and 25th of April last. The parties are the same, and their pleadings and pleas are the same, the only difference being in the lands and amount claimed, but agreeing in every other way.

I am of opinion that the principal sudder ameen has disposed of the suit in the only way he could, for the plaintiff's exhibits and his witness were insufficient to support his claim. So he has decreed only what was admitted by the opposite party, which admissions were verified by the local investigations by ameens. Coinciding in the view the principal sudder ameen has taken of the case, and seeing no reason for altering his decision, there is not any reason for summoning the respondent as provided for in Clause 3, Section 16, Regulation V. 1831.

It is ordered, that the appeal is dismissed, and the principal sudder ameen's decree is confirmed, notice of which is to be given him as directed in the enactment just referred to.

ZILLAH PATNA.

PRESENT: R. J. LOUGHNAN, ESQ., JUDGE.

THE 5TH JUNE 1850.

No. 21 of 1849.

Appeal from a decision passed by Mr. E. DaCosta, Principal Sudder Ameen, dated 3rd April 1849.

Bhograj Singh, (Plaintiff,) Appellant,

versus

Himunchul Pooree, Anund Misser, and others, (Defendants,) Respondents.

APPELLANT, laying his suit at rupees 893-8-3, claimed damages for the destruction of grain belonging to him, which had been, he urged, illegally attached under colour of Regulation II. 1806, by an order issued by Anund Misser, moonsiff of the city, one of the defendants, in a suit in which Himunchul Pooree, another defendant, was plaintiff, and appellant was among the defendants, which grain, he says, Himunchul Pooree neglected to have weighed according to the orders of the court, so that it was destroyed by rain and wind while waiting to be weighed, and further, that, although another defendant had given security and thereby removed the ground of attachment, the said grain, damaged and rotten as it was, was not released from attachment. The principal sudder ameen dismissed the claim on this among other grounds.

“Although the decree for rent in favor of Himunchul Pooree was passed against one individual, Doodraj Singh only, yet the produce of the whole 40 beegahs must be held to be hypothecated to the owner for the rent due from the said lands, no matter who cultivates the same, either one or more ryots: the fact of the plaintiff Bhograj Singh having been exonerated from liability of rent can give him no title or right to participate in the produce, which was legally held under attachment under the provisions of Regulation II. 1806, as belonging to the defendant, till security was given. If there was any irregularity in the moonsiff's proceeding of attachment, why did not the party aggrieved immediately appeal to the judge? The original suit having been decided on the 5th December 1846, and the decision affirmed in appeal by the judge on the 23rd March 1847, without any part of the moonsiff's proceedings being impeached or brought into question, the present charge of irregularity cannot now

be maintained." The rest of the reasons go to show that the moonsiff cannot be legally sued under Clause 1, Section 10, Regulation XXIII. 1814. These reasons, as contended by the appellant, I consider are quite insufficient for totally dismissing the claim. First, although Anund Misser, one of the defendants, pleaded, in his answer, "that the crops attached were the produce of the lands possessed by Himunchul Pooree, on account of which he had sued for malgoozaree, and it had not been decided in the decree awarding rent to him that those crops belonged to Bhograj wholly or in part, nor that they were not liable for the amount of the decree;" yet whether the said crops are or are not to be considered hypothecated to the payment of Himunchul Pooree's rent is a question quite irrelevant in the present case. It was not necessary to prove that they should be so considered in order to justify the attachment on failure to give security. For that attachment the provisions of Regulation II. 1806 would be sufficient. Their hypothecation would not justify the court of the moonsiff in attaching the property, or continuing the attachment, after security had been given and before a decree had been passed. Moreover, supposing the attachment to be proper, it would still be necessary for the parties making the attachment to use all due precaution that no damage to the attached property, which could be avoided should be occasioned; and if, through culpable neglect of any party, damage were sustained, the owner of the property is surely entitled to recover the amount of the loss from that party. Secondly, the principal sudder ameen has given no reasons for his opinion that the plaintiff having failed to complain against the irregularity of the moonsiff's proceedings, by an immediate appeal to the judge, the present charge of irregularity cannot now be maintained.

Some of the real points at issue in this case have not been disposed of in the decision, viz., whether the crops attached, for which plaintiff claims compensation were his property or not, whether they were irregularly attached at first and afterwards unlawfully kept under attachment, and whether they were damaged or destroyed through the culpable neglect or omission of any of the defendants or not; and indeed the points to be proved by the plaintiff and defendants respectively have not been properly defined in the proceeding held according to the requirements of Section 10, Regulation XXVI. 1814, in which, after the insertion of an abstract or abridgment of the pleadings, answer, rejoinder, and replication, it is ordered simply that the parties adduce proof of their respective statements. This is not sufficient. The principal sudder ameen should himself clearly define, omitting every thing which is irrelevant, all the points which it is essential for each party to establish; and should the pleading not be sufficiently clear to enable him to do this, he is at liberty or rather bound to question the vakeel of the plaintiff respecting the precise object and grounds of his action.

Under these circumstances, the appeal is decreed without summoning the respondent, the decision reversed, and the suit remanded to the court of the first principal sudder ameen, to be tried again after recording the points at issue more completely, advertng to the above remarks. The value of the stamp used in the appeal will be refunded.

THE 8TH JUNE 1850.

No. 22.

Appeal from a decision passed by Mr. E. DaCosta, Principal Sudder Ameen, dated 3rd April 1849.

Bhikdharee and others, (Defendants,) Appellants,

versus

Buhadoor Singh, (Plaintiff,) Respondent.

SUIT laid at rupees 130-15-11, by respondent for rent of the Fuslee year 1254, with interest, &c., of 40 beegahs of kharij jumma land, situate in Buhadoorpoor Jogee, under a farming lease said to be granted by Himunchul Pooree.

The defendants were the same as in the suit the appeal in which, No. 23, was this day decided.

Bhograj Singh, defendant, answered by among other things denying the right of Himunchul Pooree, and asserting that of Tejun Pooree, Pershad Pooree, and Hurlal Pooree, who, he said, gave him a lease, in right of which he is in possession of the lands.

Suhdeo Singh, Bhikdharee Singh, Jutadharee Singh, Jugdeo Singh, and Rajcoomar Singh disclaimed the cultivation of the lands; and Doodraj Singh, also a defendant, does not appear to have answered, at least his answer is not found in the misl.

The principal sudder ameen, referring to his reasons for decreeing the claim in the other suit above mentioned, as sufficient for decreeing also in this, passed a decree accordingly. The appellants contend that this decision is imperfect and irregular, inasmuch as the reasons for the decision should be recorded at length in every case, as this court has often ruled in authorising the second principal sudder ameen to remand cases to the moonsiff for re-trial on this very ground.

On referring to the papers of the case, I find that the principal sudder ameen did not record the reasons for his decision according to Act XII. 1843. Further, the suit, the grounds for decreeing which he refers to, has been this day remanded for trial.

For this reason, and by reason of the irregularity above remarked, the decision is hereby annulled, and the suit remanded for re-trial. The value of the stamps used in the appeal will be refunded.

THE 8TH JUNE 1850.

No. 23.

Appeal from a decision passed by Mr. E. DaCosta, Principal Sudder Ameen, dated 3rd April 1849.

Bhikdharee and others, (Defendants,) Appellants,
versus

Buhadoor Singh, (Plaintiff,) Respondent.

SUIT laid at rupees 139-8-4, by the respondent, for rent of the year 1253 F., with interest, &c., of kharij jumma lands, amounting to 40 beegahs, situate in Buhadoorpore Jogee, under a farming lease said to be granted by Himunchul Pooree.

The defendants Doodraj, Bhikdharee, and Suhdeo denied that they held as cultivators the lands in question. The defendant Bhograj denying the title of Himunchul Pooree, pleaded lease in his favor granted by Tejun Pooree, Pershad Pooree, and Hurlal Pooree, the parties in possession according to his statement.

The other defendants did not appear.

The principal sudder ameen, in his reasons for decreeing the claim, writes: "The question for investigation is whether the plaintiff is entitled to rent, and from whom?" He considered it proved that Himunchul Pooree was entitled to collect the rents and to lease them out, and not the parties whose lease was pleaded by one of the defendants; and that the defendants were occupying cultivators, he writes, "is in evidence, a fact which is further proved by the local enquiries made on the spot by the ameen, *vide* report filed 26th March 1849."

The appellants contend, among other things, that the decision is faulty and imperfect, because it does not dispose of the objections which they took to this report of the ameen, as incorrect and contrary to the order of the principal sudder ameen. I find that they did object as soon as the report was made, first, that the limits of the lands, in regard to which the ameen was ordered to investigate who were the parties who had occupied them as cultivators, were not correctly given to the ameen in consequence of plaintiff's having himself incorrectly described them; second, that the ameen had disobeyed his instruction in taking the evidence of parties (not named by the appellants) who were variously connected with the plaintiff; and I find also that the principal sudder ameen has neither made any enquiry into these objections, nor assigned any grounds in his decision for not making any enquiry, whether and for what reasons he considered enquiry unnecessary or irrelevant, or that there was some other ground. These grounds, if there are any, should have been stated. I therefore consider the investigation incomplete, and the decision faulty, and, decreeing the appeal without summoning the respondent, reverse the decision and remand the suit for re-trial with advertence to the foregoing remarks. The value of the stamps used in this appeal will be refunded.

THE 14TH JUNE 1850.

No. 12.

Appeal from a decision passed by Mr. E. DaCosta, Principal Sudder Ameen, dated 15th February 1849.

Shahzadee Begum, (Plaintiff,) Appellant,

versus

Beharcelall, (Defendant,) Respondent.

SUIT to revoke, or declare cancelled, a deed of conditional sale of certain lands named Mehndee Baug, Abid Baug, and Begum Baug, kharij jumma, recently brought under settlement and assessment, laid at rupees 427-11-5.

The plaintiff represents herself to be in possession by purchase, prior to the expiration of the year of grace allowed in such cases, of the right of Bundeh Ali, the conditional seller, and states that in consequence of the issue of notice of foreclosure by the purchaser, Nowrungeelal, the first conditional purchaser from Bundeh Ali and seller to plaintiff, tendered the principal amount for which Bundeh Ali had conditionally sold, viz., Sicca rupees 401, but as the defendant had wrongfully demanded besides that amount interest on the purchase money, and the amount of a bond which Bundeh Ali never received, with the interest thereon, the sum tendered was returned by the judge.

The defendant pleaded that possession on the lands conditionally sold to him had not been yielded, and therefore it was necessary for the seller or his representative to pay interest on the purchase money in order to preserve the right of revocation; and secondly, that Bundeh Ali having subsequently borrowed the further sum of 91 Sicca rupees, and engaged by bond to repay the same with interest along with the purchase money, the payment of these further sums was also necessary to preserve the right of revocation, and as he had included them as well as the interest of the purchase money in the notice of foreclosure, the sale had become absolute by default of payment.

Plaintiff rejoined that the delivery of possession on the lands was proved by the deed of conditional sale and by other proofs, and consequently interest on the purchase money was not claimable; secondly, that even had the money stated in the bond executed by Bundeh Ali, been received by him, the right of redemption could not be lost by non-payment of it.

The principal sudder ameen was of opinion that the deed of sale could not be revoked, "because," he writes, "exclusive of this deed, Khajeh Bundeh Ali, as is in evidence, executed a bond dated 1st October 1844, for rupees 91, in favor of defendant, stipulating to repay the amount with interest at the same time with that of the conditional sale, and that the lender was to forfeit all claim thereto, in the event of the sale becoming absolute by the foreclosure of the

mortgage. Consequently the defendant was entitled to both payments, and it was incumbent on the part of the seller to make a tender of the full amount due to the purchaser or defendant on account of both documents, as in fact it was required he should do by the notice dated 5th May 1844, issued to him under date the 10th of the same month and year, under Section 8, Regulation XVII. 1806. In it, it is clearly specified that the purchaser had applied for the payment of Sicca rupee 579-15, being the amount of the deed of conditional sale, bond, and interest thereon." On these grounds the principal sudder ameen dismissed the suit, with costs against the plaintiff.

The pleas in the lower court are reiterated by the appellant and respondent.

I find that in the deed of sale the respondent has acknowledged the delivery to him of possession in the lands. He has, moreover, acknowledged, in his answer, the receipt of 119 rupees of the rents from Nowrungeelal, who was the farmer of them. His denial of possession and consequent demand of interest are therefore clearly futile. Secondly.—Although it might perhaps be conjectured that the party executing the bond for 91 rupees, which contains a stipulation by which the property is pledged to the repayment of the money borrowed, only as long as the sale should not become absolute, intended to consent to that sum being added to the purchase money agreed upon in the deed of sale, in such manner that if it were not repaid with the said purchase money the sale should become absolute, yet conjecture cannot warrant a judicial award; and there being no such condition expressed in the bond, the purchaser had no right to demand the amount of it under the provisions of Regulation XVII. 1806. I think it was only necessary to peruse the bond to come to this conclusion, and consequently a decision on the genuineness or otherwise of it was unnecessary and irrelevant to the main issue in the case. The appellant is entitled to a decree in his favor. I therefore reverse the decision of the principal sudder ameen, and, decreeing the appeal, order that appellant immediately pay into court the sum of Company's rupees 427-11-5, in lieu of Sicca rupees 401, the amount of the purchase money, and respondent surrender the deed of conditional sale, (which will be cancelled in virtue of this decree and the tender of the said purchase money,) and receive the said sum of rupees 427-11-5. All the costs of suit in both courts will be paid to the appellant by the respondent.

THE 22ND JUNE 1850.

No. 32.

Appeal from a decision passed by Rai Shunker Lall, second Principal Sudder Ameen, dated 26th April 1849.

Sudaseo Singh, (Plaintiff,) Appellant,

versus

Munsaram and others, (Defendants,) Respondents.

SUIT instituted by appellant for the mesne profits, with interest, of the 25th share of Nuseerpoor khass and other muhals, accruing since the date of a decision, of the 13th June 1847, for possession on the said muhals, up to the date on which the decision was executed; laid at rupees 1434-12-5.

The principal sudder ameen has pronounced the claim to be untenable, because the decree for possession, as he thinks, has already decided that the plaintiff was not entitled to mesne profits; secondly, because plaintiff's application for these profits made in the course of execution was rejected, and therefore, according to Construction No. 1129, his claims could not become the subject of a new suit; thirdly, because plaintiff had neither appealed against the decree nor against the order passed in the course of execution.

Appellant contends that the Construction in question does not apply to this case; and that, as the Circular Order of the 11th January 1839, forbidding the dividing of a claim to possession and mesne profits into two suits, was passed after the date of his decree for possession, he cannot be considered to have given up his claim to wasilat, and in order to obtain wasilat his only course was to institute a suit, as, not having claimed them in the former suit, he could not obtain them by a review and amendment of the decision in that suit, either according to the abovementioned Circular, or that of the 11th September 1829.

These reasons are good, and I find, moreover, that the principal sudder ameen's view of the effect of the first decree is erroneous, and involves a false principle, viz., there can be a decision without a question raised by the parties to a case. The expressions in the decree which gave occasion to this erroneous view are these: "It is proper to decree possession of the property without receipt of mesne profits." Now these words "without receipt of wasilat" do not convey a decision on any question before the court, since such a question could only arise on the plaintiff's claim to wasilat, which, it is evident, he never preferred. The words are mere surplusage; and if they have any meaning or object it can only be an intimation that the plaintiff did not claim wasilat. The decision is evidently erroneous with reference to the points at issue, and has in consequence been passed without sufficient investigation of the merits. I therefore decree this appeal without summoning the respondent, and, reversing the decision, remand the suit for re-trial with advertence to the above remarks. The value of the stamps in this appeal will be refunded.

THE 25TH JUNE 1850.

No. 37.

Appeal from a decision passed by Mr. E. DaCosta, Principal Sudder Ameen, dated 19th July 1848.

Nirban Singh and others, (Plaintiffs,) Appellants,

versus

Hurruk Narain Suhae and others, (Defendants,) Respondents.

SUIT for possession on certain landed property and a house, according to an agreement (entered into by the fathers, deceased, of the defendants in a deed called a by-byana) to execute a deed of sale and transfer the said property, receiving balance of purchase money in consideration of having received an advance of such purchase money; laid at rupees 1526-12.

The defendants admitted that such a deed had been drawn out, but had not been delivered, nor indeed executed on account of the failure of the plaintiff to advance that part of the purchase money agreed upon or indeed any part of it.

The principal sudder ameen discredited the evidence of the witnesses who deposed to the due execution and delivery of the documents, viz., the by-byana acknowledging the receipt of 39,000 rupees, and a receipt for 8551 rupees, and the payment of those sums, and dismissed the suit, adjudging the plaintiffs to pay the costs. Among his reasons were some of much weight founded on evidence brought forward by third parties in the suit. These consisted, the principal sudder ameen writes, of decisions and proceedings in the Tirlhoot court, from which it is evident that, of the estates specified in the by-byana deed, some are held by lessees who have obtained decrees in 1846 and 1847 A. D., for the amount advanced thereon by them, while others have been sold 30th November 1837, in satisfaction of decrees passed against the defendants, &c. &c. In none of these several suits did the plaintiffs represent their claim, &c. &c.

The appellants contend that, had they been called upon and opportunity allowed them, they could have refuted these objections of third parties, which caused the principal sudder ameen to come to the conclusion that they were in collusion with the defendants, by proofs from the proceedings of the same courts, showing that the decrees, mortgages, or leases in question, had been paid off, and the objectors were colluding with the defendants. I find that no opportunity was given them to rebut these objections by proof. No issues were defined in consequence of these objections, and the enquiry is therefore insufficient. I therefore reverse the decision, and remand the case in order that the issues as between plaintiffs and the third parties may be properly defined, and proof be demanded from the parties to those issues, and the case again heard and decided. The value of the stamps in this appeal will be refunded.

THE 28TH JUNE 1850.

No. 33.

Appeal from a decision passed by Rae Shunker Lall, second Principal Sudder Ameen.

Girdharee Singh, (Plaintiff,) Appellant,

versus

Jugdeep Narain and others, (Defendants,) Respondents.

SUIT for confirmation of possession on certain lands, constituting the bed of the river Nurehna within certain limits with the water, the right of fishing, with mesne profits thereof, as belonging to mouzah Ustha, and for the annulment of the proceedings of the deputy collector defining the said river to be within the limits of lands in possession of defendants, and of the superintendent of surveys confirming the same; laid at rupees 882-8.

The plaintiff, claiming to be confirmed in possession, yet stated the grounds of his suit to be his dispossession from the land in dispute by virtue of the proceedings in question, which are dated 19th April and 16th July 1842, respectively. He admits that the portion of the river claimed does not adjoin or bound Ustha in any part; that he asserts his right and possession from time out of mind as shown first by a statement (kyfeut) bearing the seal of a kazeer, witnessed by the kanoongoe and chowdhrees of pergunnah Pelitch, given to the ancestors of plaintiff, who had complained to the authority of the day against the ancestor of defendants, proprietors of mouzah Deeha; secondly, a decision of the moonsiff of Hilsah, passed 16th July 1827, confirmed by the judge of Behar. The defendants denied the right of plaintiff, and asserted their own ancient possession upon the disputed land, which they urge evidently belongs to their estates which it either borders or intersects. They objected to the kyfeut pleaded by the plaintiff, on the ground that he had not named the authority from which it emanated, and to the decision of the moonsiff, inasmuch as they were not parties concerned in the case, and the decision in it was obtained by collusion of the parties, and at any rate it could not be pleaded as proof of right but only of possession at that time. The witnesses on both sides spoke positively in regard to the possession of that side respectively by whom they were brought forward. But the principal sudder ameen gave credit to those of the defendants, and withheld it from those of the plaintiff, because the decision of the deputy collector, confirmed by that of the superintendent of surveys and the report of an ameen, supported the statement of the defendants: a map of the disputed land and adjacent parts given in by the plaintiffs showed the lands to belong to the estates of the defendants; the kyfeut had no signature of any authority, and was evidently a pretended document contrived for the purpose of creating the appearance of right; the decision of

the moonsiff was procured by the collusion of the plaintiff with the defendants in the case, and moreover could not bar an investigation into the respective right of the parties in this case, the defendants of which had not been parties in that case, and the point of right to possession not having been decided.

The appellants urge that the principal sudder ameen has not given any reasons in his decision for giving the preference to the witnesses of the defendants, who did not speak so positively for the defendants as appellants' witnesses did for appellants; that the principal sudder ameen committed an error in taking the proceedings of the deputy collector and superintendent as proof in this case, in which it is a question whether they are to be reversed or not, and should have sent another ameen or himself have made local enquiry, when appellants urged strong objections to the report of the ameen who was deputed; that appellants proved their case by the moonsiff's decree, and the principal sudder ameen had stated no reasons for thinking it collusive; that the right of plaintiff does not depend on the situation of the river with reference to the lands of their estate Ustha, and they could show by precedents that right of fishing had been decreed to parties whose estates were similarly detached, as in the case, from the rivers, wherein they made good their exclusive right of fishing; that the document bearing the seal of the kazee was regular, being conformable to the custom or practice of the time, viz., 1789 A. D.

I find nothing in all these reasons to constitute ground of interference with the decision, which appears to me to be perfectly just and proper for the following reasons. The deputy collector's proceeding defined the boundaries between the respective estates of the plaintiff and defendants, after ascertaining the limits of the possession of the parties. He determined that the defendants were in actual possession of the disputed land as part of their estates. Neither party has urged that he exceeded his powers in determining this point. His decision, confirmed as it has been by that of the superintendent as far as regards the determination of that point, must be held conclusive and cannot be now called in question. If it is to be reversed, it must be on the ground of the possession of the defendants being wrongful. Consequently all the evidence which appellants adduced of their length of possession goes for nothing. For their loss of possession, undefined as is the time of its occurrence and in the absence of any allegation of force or fraud, is a stronger presumption against their right, than its continuance from any period, however, ancient can be in its favor. Their positive proof of right remains to be considered. The only proof in this shape which they have offered is the kyfaut. This, were it proved genuine, could only be taken as a proof that Mungul Singh, mookurruredar of Decha, one of the estates the proprietors of which are concerned as respondents, referred a dispute respecting the right to a "khar" (pool) in

this river, the situation of which pool is perfectly undefined, between him and the mookurruredars of Ustha, to the decision of a third party, who declared on oath in favor of him of Ustha, and a judicial decision ensued according to the declaration of the referee. The *kyfeut* expresses this decision, but yet the appellants have not claimed for this document the force of a judicial decision, and did not respond to the defendants' challenge to name the authority who passed it. It can only therefore be considered as a written certificate by the kazee, kanoongoe, and chowdhrees of the pergunnah, of the facts detailed above. As such, I cannot but agree with the principal sudder ameen in considering it a very suspicious document indeed. The forgery of such a paper would be attended with little risk of detection, since the persons said to have given and attested it are, in all probability, long since dead. The kazee did not sign his name, but the kanoongoe's signature and those of the chowdhrees are not unlikely to have been known to any persons now living; but appellants made no effort to adduce even this slight proof of the genuineness of the document, viz., proof of the reality of the signatures of the witnesses. At any rate, he makes no excuse for not calling any such witnesses. In short, this document is unauthenticated, and there is nothing in it to show that it refers to the lands now in debate. The plaintiffs have totally failed therefore to prove their right, and I therefore dismiss the appeal, without calling on the respondent to plead, and confirm the decision.

THE 28TH JUNE 1850.

No. 15.

Appeal from a decision passed by Rae Shunker Lall, second Principal Sudder Ameen, dated 19th February 1849.

Khajeh Wahuj Ooddeen, (Plaintiff,) Appellant,

versus

Syud Enact Hossein and others, (Defendants,) Respondents.

SUIT to declare mouzah Danapore Korecawan, for the sale of which in execution of a decree defendants obtained an order from the judge of this city, exempt from sale.

The plaintiff's ground is that the property is inalienable according to the terms of a grant from the Government, under which it was held rent-free by his father, the late Soobadar Major Walec Muhumud, is now held by him, his eldest son, at an assessment equal to half the usual revenue assessment, and is to descend to the eldest son or next male descendant for ever with a specific object, viz., to perpetuate a memorial of the military services and their reward of the original grantee.

The defendants replied that having been assessed to the revenue the estate is liable to alienation by sale in the collectorate

in the event of a balance, and therefore it is liable to alienation in payment of other claims. The fact of its being so liable to sale for recovery of arrears of revenue was not denied by the plaintiff in the lower court, and must be assumed as granted therefore. If therefore the estate can be alienated for one purpose, it can be for another, because the same conditions in the grant which, it is contended, bar the alienation by any one of the incumbents for life must bar alienation in any way or under any circumstances; and appellant cannot now contest this point, which by not denying he has admitted, because only on his denying the fact could proof of it be demanded from the defendants. Under these circumstances the decision, though not grounded on this reason, dismissing the claim, must be upheld. The appeal is therefore dismissed, with all costs and interest thereon to date of payment payable by appellant, and the decision is confirmed.

THE 29TH JUNE 1850.

No. 29.

*Appeal from a decision passed by Mr. E. DaCosta, first Principal
Sudder Ameen, dated 15th April 1849.*

Beebee Hussun, herself and as heir of Ghose Buksh, deceased,
(one of the Defendants,) Appellant,

versus

Meer Bundee Ali, (Plaintiff,) Respondent.

CLAIM, to recover the amount paid by plaintiff to appellant on account of divers of the defendants, co-debtors with plaintiff, under a decree held by appellant, laid at Company's rupees 449-7-3, inclusive of interest.

The first issue of fact arising out of the pleadings in this appeal is whether it was passed against Chowdhree Ghose Buksh, after his decease. I find that in the heading of the decree wherein the names of the parties are recorded, Ghose Buksh, deceased, defendant, is clearly mentioned as having been succeeded after his demise by Beebee Hussun, his heir, and therefore, although the final order is so worded as to make it appear that Ghose Buksh and Beebee Hussun are both liable under the decree, yet it must be the extreme of folly or a determined spirit of cavilling, which can persist in construing the decree to be against Ghose Buksh. The insertion of his name was probably a clerical error, or at any rate the words are mere superfluity without meaning or object. The second, and this is really a material, issue of fact, is whether appellant and Ghose Buksh, in purchasing the rights of several of the defendants, in mouzah Eksurra, during the course of the trial of their suit against them and their co-sharers for the recovery of arrears of rent due on account of the said mouzah, and not setting the price as a set-off against their claim but obtaining a decree for the full amount and

proceeding to execute the decree by the sale of the rights of the remaining defendants in the said mouzah, as they confessedly did, acted thus in collusion with the selling defendants and with a view to defraud and injure the plaintiff or not. The mere statement of this question suggests the answer in the affirmative. If the selling defendants acted merely with a view to pay the debt, the proceeds would have been carried to their credit in the debt. They had some other object therefore, and their conduct in appropriating the purchase money to their other purposes leaving their co-sharers to pay their (the sellers') share of the balance, was fraudulent in the extreme. Again, the appellants must have seen this their object, and would never have allowed them to appropriate the purchase money, until they had secured to themselves payment of their own claim; there must have been collusion between the parties, and the object was clearly to practise a fraud on the other sharers.

The first issue of law, whether the decree is irregular, because it names Ghose Buksh as one of those decreed against, has been decided already in the negative. The second is this: as neither appellant nor Ghose Buksh was co-debtor with respondent under the decree satisfied by him, and respondent (plaintiff) did not state in his plaint the grounds on which he sued them, though he did state them in the *rud-jowab*, could he maintain his suit against them? The fact that appellants were plaintiffs instead of co-defendants in the case cannot excuse or defend them from the penalties of their collusion, of which they reaped the benefit in the complete realization of their decree from one of the debtors; and although the plaintiff did not explain himself clearly in the plaint regarding the special grounds on which he included the appellants with his co-sharers and co-debtors as defendants in his suit, yet he did so in the *rud-jowab* in a clear and full manner, so that appellants had every opportunity of replying and defending themselves against the action. I am clearly of opinion therefore that the plaintiff committed no informality such as, according to the prescribed rules of pleading, can be deemed fatal to his claim.

The principal sudder ameen has therefore very properly decreed the suit, making the costs payable by the defendants (appellants) and others, excepting certain among them who are not parties to this appeal. The appeal is therefore dismissed, the decree confirmed, and the payment of all costs in this appeal, with interest to the day of payment, is hereby decreed to be made by the appellants.

ZILLAH PURNEA.

PRESENT: D. PRINGLE, ESQ., JUDGE.

THE 29TH JUNE 1850.

Appeal No. 2 of 1849.

Sudder Ameen, Mr. Noney.

Ramdyal Rae and Kuboo Rai, (Plaintiffs,) Appellants,

versus

Dowlut Chowdry, Asman Chowdry, and others, (Defendants,) Respondents.

Vakeel for Appellant—Gopee Mohun Burrat.

Vakeel for Respondent—Muneerooddeen Ahmud.

THE appellants, ryots, sued as paupers, to recover rupees 547-15-3, being value of 600 maunds of paddy, forcibly removed by respondents, farmers, and co-defendants, under farmers, in 1251 and 1252, though no rent was due thereon. Of whom Dowlut Chowdry, in behalf of himself and the others, who make no answers, pleading not guilty, replies that the appellants had voluntarily resigned their cultivation in 1252, under writing produced, when it was given out to co-defendants, as his witnesses will prove. The sudder ameen, on grounds, that several of these witnesses declared the appellants to have been in possession in 1252, by whom the grain, for seizure of which they have now sued, was made over to the co-defendants, under farmers, for rent of 1251, and rejecting as spurious the writing produced, for relinquishment of their cultivation by appellants, gives a verdict against Dowlut Chowdry only, who had become liable by his answering for the co-defendants, thus declared to be relieved; but with a mitigation of damages, the valuation being pronounced excessive.

In appeal, it is contended, first, that no objection being raised by the defendant below, to the damages as thus assessed, and the same being duly proved by evidence, the abatement so made was arbitrary and unauthorized; secondly, that the liability of the respondent could not be so admitted for release of the co-defendants not replying, to the prejudice of the the appellants.

JUDGMENT.

The defendants' (respondents') witnesses, as stated by the sudder ameen, here prove too much; with whom I further agree, in rejecting the deed for surrender of their cultivation by the appellants, of

which it need only be observed, that it is found to have been already rejected by the moonsiff, in a previous suit, as affirmed by the principal sudder ameen in appeal; but of this no note is taken by the sudder ameen, notwithstanding the evidence of it before him. As respects the objections raised in appeal, they are, I consider, on both points valid. The co-defendants could not be so relieved, merely on the assumption of liability by respondent; nor were the damages, as proved by appellant, and to which no objection was there made, to be subjected to such mitigation. The case will therefore be remanded, that these errors be rectified, and a verdict given according to law and the evidence for damages before the court. The usual order for refund of the stamp being issued.

THE 29TH JUNE 1850.

Appeal No. 3 of 1850.

Sudder Ameen, Mr. Noney.

Dowlut Chowdry, (Defendant,) Appellant,

versus

Ramdyal Rae and Kuboo Rac, (Plaintiffs,) Respondents.

IN the preceding number, the respondents appeared as appellants; whose objections being admitted, the case was remanded for re-trial. On the same grounds, that of the appellants here is dismissed.

THE 29TH JUNE 1850.

Appeal No. 4 of 1849.

Sudder Ameen, Mr. Noney.

Shibdyal Singh, (Defendant,) Appellant,

versus

Gungaram Sahoo, (Plaintiff,) Respondent.

Vakeel for Appellant—Gobind Chund.

Vakeel for Respondent—Mahboob Lall.

BOND debt for rupees 570, principal and interest, executed by appellant the 32nd Sawun 1246, for 285 rupees, as for value received. Who pleads, first, that this is void because of usury, the amount so received being only 197 rupees, and the balance, rupees 88, included as interest, by anticipation, at $\frac{1}{2}$ an anna in the rupee; secondly, that it has, notwithstanding, been paid in full, by assignments on his ryots, as proved by respondent's receipt produced by them in appellant's suit for rent before the collector, to which witnesses to the bond will further depose. Of the other parties, co-defendants, the widow of Dharee Singh, mother of appellant and Jhottee Singh, his brother, a minor, do not reply, Mungul Singh, who appears as agent, altogether repudiating it. The respondent, in replication,

disclaims his receipt; as he does the charge of usury. The sudder ameen finds that, of four subscribing witnesses, one declares 200 rupees to have been received by appellants, another 198 rupees, and two that 485 rupees in full was so paid by respondent; admitting which evidence to prove this, he dismisses the plea of usury, and crediting appellant with 180 rupees, under respondent's receipt, filed in the summary suit, he awards the balance with interest, or rupees 303-1-6.

In appeal, the former pleas are revived, and the original account, drawn out by the writer of the bond, and signed by respondent, in which $\frac{1}{2}$ an anna in the rupee is included as interest, here produced.

JUDGMENT.

Of the four subscribing witnesses examined to this bond, two, Sookmar and Bhodee, depose to interest of half an anna in the rupee being charged as principal; the sum received by appellant being, according to the former, rupees 198; the latter, rupees 200; a discrepancy of no moment in such case. Sookmar, further, states that he heard from appellant of the *burats* he had given on his ryots; Bodhee, that respondent himself had told him of this. Of the remaining witnesses, Roopun saw respondent receive from Mungul Singh rupees 22, 8 annas; who himself paid to him rupees 45, on appellant's *burat*; rupees 285, he states, was received in full by appellant; to which Lootun also deposes, but knows nothing of repayment. The evidence of Bhodee and Roopun is admitted by both parties, while to Sookmar's no objection is raised. The two first, it is seen, distinctly depose to usury; and all three to grant of the *burats*; evidence sufficient, therefore, at once for rejection of the bond, and the claim thus fraudulently revived. But with respondent's account here produced, to prove usury, and his receipt, to establish fraud, it becomes imperative, to commit for perjury the witnesses who have so deposed to payment of rupees 285 to appellant; likewise the respondent, for complicity in suborning this evidence. The fraud so attempted, forming a supplementary charge, at the discretion of the magistrate, which the appellant declares it is his intention to prosecute. The judgment of the lower court is accordingly reversed; the bond being declared illegal and void; and the claim, as now revived, false and fraudulent.

THE 29th JUNE 1850.
Appeal No. 5 of 1849.

Sudder Ameen, Mr. Noney.

Gunga Ram Sahoo, (Plaintiff,) Appellant,

versus

Shibdyal Singh and others, (Defendants,) Respondents.

ON the grounds declared in the preceding number the appeal here is dismissed.

THE 29TH JUNE 1850.

Appeal No. 10 of 1849.

Sudder Ameen, Mr. Noney.

Jugguth Narain, (Defendant,) Appellant,

versus

Rughobeer Koomar, (Plaintiff,) Respondent.

Vakeel for Appellant—Seetul Chunder.

Vakeel for Respondent—Bama Churn.

THE respondent brought this action to recover rupees 438, being amount of ferry collections made by appellant, at Ghat Bahurgumma, from 1252 to 1254; viz., for 1252 and 1253 in time of his late father, and subsequently, on renewal of his pottah by the motahid, in respondent's favor. Appellant replying that the said ghat is included in the lease of mouzah Bahurgumma, which he holds of the motahid; further that no such amount has ever been realized from the ferry. The sudder ameen, on ground that appellant has failed to prove the ghat being so included in his farm, gives a verdict in respondent's favor; awarding rupees 50 annually on this account, being twofold the rent as fixed by his pottah.

In appeal, it is contended that respondent could have no title, in supersession of that enjoyed by the appellant.

JUDGMENT.

THE appellant, defendant below, has pleaded guilty to collecting dues belonging to the ferry in dispute, on grounds of its being included in the mouzah which he had rented from the motahid, C. Palmer. Respondent's pottah is dated 1254, who states that he thus succeeded his father, former lessee of the ferry, as held of the same motahid, by a pottah dated 1252; but respondent himself admits, that neither his ancestor, nor himself, had ever made collections under this authority, from which it is evident, as its object remained unaccomplished, that this was incomplete. Hence, without reference to appellant's objection, it was imperative on the respondent to include the motahid, in his suit, from whom his title is derived. On which ground, the case is remanded, in order that the respondent be allowed to include the lessee, by a supplementary plaint, the exception thus taken not having originated with the appellant.

THE 29TH JUNE 1850.

Appeal No. 13 of 1849.

Sudder Ameen, Mr. Noney.

Rughobeer Koomar, (Plaintiff,) Appellant,

versus

Raja Ram Koomar, (Defendant,) Respondent.

Vakeel for Appellant—Seetul Chund Rae.

Vakeel for Respondent—Bama Churn.

CLAIM for rupees 930, as damages, for dues illegally appropriated by respondent and others, co-defendants below, being collections from Ghat Pipra Chintamun; and golahs attached; for which appellant's father took pottah in 1252, as renewed in appellant's favor, on his death, in 1254. Respondent pleading, not guilty, who states he is farmer of mouzah Burgumma, and collected only the dues of the ferry attached to that. The sudder ameen, finding the allegations, as to collections by respondent in Pipra Chintamun, not established, dismisses the suit, but disallows costs for separate vakeels, the same pleader being appointed under separate vakalutnamehs.

In appeal, it is contended that the said ghat being sublet by appellant's father to the co-defendants, proof conclusive existed of his ouster; while the co-defendants should not have executed separate vakalutnamahs. Construction No. 500 being rescinded.

JUDGMENT.

This is a claim for damages, on account of dues from Ghat Pipra Chintamun, and golahs attached, for which appellant produces a pottah, obtained by his father from the motalid in 1252, and renewed in appellant's favor, on his death, in 1254; who, he states, having with much labour induced four or five golahdars to settle there, in 1253, they were forcibly carried off, and obliged to quit, by the respondent. It thus appears, on appellant's own showing, that, at time of obtaining the said pottah, these golahs had no existence, and that the few golahdars brought there in 1253, got no footing. The plea as to force, being inadmissible, first, because the parties themselves do not appear as plaintiffs; and secondly, if true, and they were thereby aggrieved, they would probably have first gone to the magistrate. And as respects the dues for ferry collections in 1252 and 1253, said by appellant to have been realized by the co-defendant, Panchoo and Bhinkoo, ghatwals, to whom the ferry had been sublet by his late father, the former, in his answer, disclaims all connection with this ghat, nor does appellant produce any proofs of it. Whose objection to the charge of the moiety of the vakcel's fees, included as costs, on the ground that Construction

No. 500 is repealed, is not clearly intelligible; Act I 1846 prescribing, that in the award of these, Section 26, Regulation XXVII. 1814, should be followed; Clause 3 of which leaves this point to the court's discretion, so that the Construction referred to, is only superseded, not repealed. On all which grounds, the appeal here brought is dismissed.

ZILLAH RAJSHAHYE.

PRESENT: G. C. CHEAP, ESQ., JUDGE.

THE 21ST JUNE 1850.

No. 86 of 1849.

Appeal from the decision of Moulvee Moojeebul Ruhman, Moonsiff of Beaulah, dated the 29th June 1849.

Haffee Sircar, (Defendant,) Appellant,

versus

Joysunker Sundyal, (Plaintiff,) Respondent.

THE appellant and six others jointly and summarily sued for *replevin* before the collector of Rajshahye, their property having been distrained by the respondent, through an *ameen*, for arrears of rent claimed by him. The collector, however, held the distraint unjustifiable, as, though the respondent had exercised his right as an auction purchaser, to measure the lands in the occupancy of the appellant and others, whose property had been distrained by him, yet, what he thus sought to recover, was an enhanced rent, and he (the collector,) under Section 10, Regulation VIII. 1831, had no jurisdiction in a matter which related to enhanced rents. He accordingly gave the appellant, with those associated with him as plaintiffs, a decree, relieving them and the sureties from the demand for which distraint had been made. To set aside this award the respondent instituted the present suit, in which he not only claimed the rent for which he distrained the appellant's property, but also rent *before* and *subsequent* to such distraint. The total amount claimed as rent, from Bysakh 1249 B. S. to Phalgun 1251 B. S., after deducting what had been paid, being rupees 73, annas 8, gundahs 3, and this the moonsiff decreed, as separate *kuboolents* had been given by the appellant and others. Against this decision the appellant appealed, and the appeal was admitted on the 5th April last to examine the record of the summary suit. It is quite clear from it that no rent for the enhanced rate had been ever paid before the distraint by the appellant; and though a *kuboolent* was filed, the only witnesses the respondent brought forward to prove the *kuboolent* were two *peadahs* of his *cutcherry*, both ignorant persons, and who

could neither read nor write, and who admitted they had never before that occasion seen the appellant. These men, being employed in collecting the respondent's rents, were the last persons that should have been made witnesses to such *kuboolents* for enhanced rent of a *jote*, which, there can be little doubt, was in the occupancy of the appellant's ancestor, and of the parties against whom the process of distraint issued out, who claimed to hold it as a *mouroosee jote* at a much lower rate, and who, it was not at all probable, would give *kuboolents*, agreeing to pay more rent, unless (after notice) they had under a decree of court been declared liable to pay the same. It is evident the collector, Mr. Forbes, placed no reliance either in the *kuboolent*, or witnesses adduced in support of it; neither do I consider the first genuine, or the witnesses deserving of credit. The moonsiff's decision therefore must be reversed, and the collector's award upheld, by which the respondent is again left to the usual and regular method for enhancing the rent of the appellant, if he still wishes to do so. All costs in both courts to be made chargeable to the respondent.

THE 21ST JUNE 1850.

No. 90 of 1849.

Appeal from the decision of Moulvee Mooljeebul Ruhman, Moonsiff of Beaulah, dated the 29th June 1849.

Ubun Bewah and Roobun Mundul, the former the widow, and the latter the nephew of Harow Mundul, deceased, (Defendants,) Appellants,

versus

Joysunker Sundyal, (Plaintiff,) Respondent.

CLAIM 36 rupees, 10 annas, 6 gundahs, with interest, on account of arrears of rent.

The husband of appellant in this case was one of the six associated with Haffee, who sued for *replevin* before the collector, and whose cause, No. 86, has been decided this day. The moonsiff in this case also gave the respondent a decree on a *kuboolent*, which again is supported by the evidence of the two *peadahs* of the respondent's *cutcherry* alluded to in the former case, and whose testimony, for the reasons there given, I did not credit. Rejecting, therefore, the *kuboolent* as not genuine, the same order is passed in this case, and all costs are made chargeable to the respondent.

THE 27TH JUNE 1850.

No. 1 of 1849.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 17th December 1848.

Kishen Soondree Dibe, mother and guardian of Gobind Nath Chowdhree, a minor, (Defendant,) Appellant,

versus

Jadub Narayun Roy Chowdree, (Plaintiff,) Respondent.

CLAIM for possession of 2 beegahs 15 cottahs of land, including a tank, in mouzah Chopookurea, price of bricks and cocoanuts. Total claim, or suit laid at rupees 1027.

The respondent instituted this suit on the 17th September 1847, the land, it being alleged, forming part of certain lands decreed to his mother, and the tank made out of a *chokee*, or foss. The bricks were part of an old building, and others belonging to kilns burnt by his grand uncle, and belonging to him. The cocoanuts were fruits on nine trees standing on the land.

The principal sudder ameen, adverting to a former decree of this court, confirmed in appeal by the Moorshedabad court of appeal, decreed possession of the land and tank, and awarded as damages, for the bricks 225 rupees, and for the cocoanuts 16 rupees.

Against this decision the appellant appeals, pleading that the land was in the joint tenancy of the shareholders, and that the others had deserted the place when she erected her dwelling house. This is very probable, and at the same time did not warrant her appropriating land decreed to another party, and who had been put in possession under his decree. I have gone through the proceedings and the greater part of the evidence, and see no reason for disturbing the principal sudder ameen's decision. At the same time think the respondent might have summarily applied to the court, to be maintained in possession of what had been decreed in his favor, when doubtless he would have got redress without bringing a regular suit. The appeal is therefore dismissed, and all costs are made chargeable to the appellant.

THE 28TH JUNE 1850.

Appeals from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 23rd May 1849.

No. 18 of 1849.

Doorgashib Mujmadar, (Defendant,) Appellant,

versus

Kallydass Surma, after his death, Kallysunker Mujmadar, for himself and as guardian of Bhowanny Churn Mujmadar, a minor, (Plaintiff,) Respondent.

No. 22 of 1849.

The above Respondent, (Plaintiff,) Appellant,

versus

The above Appellant, (Defendant,) Respondent.

CLAIM for possession of a 3 annas 5 gundahs share of lands in mouzah Tengradhur, and to be admitted to a settlement of the same with Government. Suit laid at 145 rupees, 13 annas, and $1\frac{1}{2}$ pie.

The original suit out of which these two appeals arose was instituted on the 13th March 1847 by Kallydass Surma, deceased, the ancestor of the respondent in case No. 18, who claimed to be a *malik* and in possession of the above share of certain resumed *lakhiraj* lands, for which, *after* resumption, a settlement had been made with the appellant and another. The suit rested on certain orders of the Revenue Board and commissioner, the final one by the latter bearing date the 20th January 1844, by which Kallydass was left to his remedy by regular suit. And the principal sudder ameen, with reference to certain *butwarra* papers, and an agreement between the plaintiff and Kallychunder Surmah, who divided among them the share of one Gopeenath Mujmadar, who died childless, and seised of a 2 annas 10 gundahs share (the half of which the parties alluded to by right of inheritance were entitled to, and each took a 1 anna 5 gundahs share,) and also with reference to a petition, alleged to have been given in to the collector by the defendant, (present appellant,) gave the plaintiff a decree for a 2 annas, 8 gundahs, 3 cowrees share, stated by the defendant in the petition to be the share that Kallydass was entitled to, and further declared that the plaintiff was entitled to engage and make a settlement for such share with the collector. The plaintiff's claim for the remainder (6 gundahs 1 cowree) the principal sudder ameen held not established.

Against this decision the defendant appeals in case No. 18, and, *inter alia*, pleads:

First.—That, having been admitted to a settlement by the collector, the civil courts could not disturb or alter such settlement.

Second.—That in the first instance the plaintiff had made the

collector a defendant, who pleaded he had been improperly made a party, on which the principal sudder ameen struck out his name, instead of nonsuiting the plaintiff under Clause 2, Section 23, Regulation VII. 1822.

Third.—That Kishen Deb, the mutual ancestor of the plaintiff and defendant, left no son by name Joykishen, but divided his share in the proportion of 4 annas to appellant's grandfather, Hurkishen, and 2 annas to Baleekishen, the father of Kallydass.

With regard to the first point, or question of the court's jurisdiction, this has been fully settled by the cases of Syed Shah Mohumud Yassen *versus* Syed Enyut Hossein, (vol. VII. Sudder Dewanny Adawlut Reports, page 284,) and the case of Premessur Dial and other *versus* Thakoorpershad, (Sudder Dewanny Adawlut Decisions for 1849, page 497).

With regard to the second point. In Clause 2, Section 23, Regulation VII. 1822, there is not a word about a *nonsuit*, in the event of a plaintiff making the collector a party. It only declares that it shall not be necessary to make the collector, or other officer of Government, a party to the action; and there may be cases that it would be proper and necessary to make him one. For instance, if the collector refused to make a settlement with a party, or some of the parties, in possession, why should he not be made a defendant? or, under the present law, the Government? Again, if the collector declined to make a settlement with a party, not actually in possession, but who claimed a right to be admitted as a *malik*, this would be just one of the cases that it would be both improper and unnecessary to bring in the collector as a party to the action. The principal sudder ameen, therefore, in this case acted extra-judicially in striking out the collector's name, and the Circular Order of the Sudder Dewanny Adawlut, dated the 7th of July 1837, (No. 206, vol. II.) cited in his proceeding of the 16th April 1849, had only reference to cases coming under Section 38, Regulation XI. 1822, or such cases where the collector had to carry out the orders of a civil court, not to cases where the act of injustice complained of was his own act, and the plaintiff had been forced by it into court. And in a recent case decided by the judge of Chittagong (where I should imagine these cases are frequent,) I find the judge decided that Government should pay their own costs, (*vide* Decisions for Chittagong for March last, p. 8, *et infra*.)

I now come to the third point, and which is the question involved in both appeals. The plaintiff in his plaint, and *all along*, has averred that Kishen Deb left three sons by two wives—Hurkishen, the ancestor of the defendant, by one wife, and Joykishen and Balleekishen by the other; and that at his death the three sons succeeded to equal shares in the resumed lands, then held as *lakhiraj*; and afterwards a *butoarra* amongst themselves was made of the same. That Joykishen dying childless, Balleekishen succeeded to his share,

and on his death the shares, or 4 annas, devolved on Kallydass, and his brother Kishendhun, each taking a 2 annas share, and as heirs of Kallydass the respondent claims the 2 annas that he was seised of. Now, as already stated, the defendant pleads that Kishen Deb left no son by name Joykishen, and further pleads that, on the death of Kishen Deb, his son Hurkishen succeeded to a 4 annas share, and Balleekishen to 2 annas only. No documents to show the grounds for such distribution have, however, been filed by the defendant, and on the part of the plaintiff, to prove the existence of the aforementioned Joykishen, only some old *butwarra* papers, not witnessed, and whose authenticity, as they have never been filed before in any court, is very questionable. Both these averments may therefore be called bare assertions without proof. At the same time both parties admit Kishen Deb was their mutual ancestor, and that he died leaving two sons by name Hurkishen and Balleekishen, and at his death he was seised of a 6 annas share of the lands in Tengradhur, for which the defendant has settled; and in the absence of other proof the court must declare to what share the parties would have been entitled under the Hindoo law of inheritance. By that law each would have succeeded to equal shares, and again Balleekishen's share be divided between his two sons, or the original plaintiff have succeeded to a 1 anna 10 gundahs share: and with the share that fell to him on the death of Gopeenath Mujmadar, viz., 1 anna 5 gundahs, the whole share he could claim would be 2 annas, 15 gundahs. The petition given in to the collector, or filed in behalf (it is alleged) of the defendant, cannot be considered proof to support the plaintiff's claim, and acting merely on such petition was a very cursory way of disposing of the disputed claim. I therefore reject such petition as proof; and finding that the ancestor of the respondents, or original plaintiff, was, from the admission of the parties to the suit, entitled by the law of inheritance to a 1 anna 10 gundahs share, and as collateral heirs to a 1 anna 5 gundahs share, I decree the appeal, and, in amendment of the principal sudder ameen's decision, declare the respondents entitled to possession, and to engage or make a settlement for a 2 annas 15 gundahs share of the resumed land in Tengradhur, and to *mesne* profits of such share from the date of the settlement made with Doorgashib, who will, however, pay all his own costs in his appeal; the respondents paying their own.

With regard to the appeal of the respondents, or case No. 22, it must be dismissed, and all costs, both of appellants and respondents, be paid by the appellants.

THE 28TH JUNE 1850.

No. 110 of 1850.

*Appeal from the decision of Moulvee Moojeebul Ruhman, Moonsiff of Beaulah, dated the 20th May 1850.*Mekoor Sircar, (Plaintiff,) Appellant,
versus

Loochee Paramanik, (Defendant,) Respondent.

THE appellant sued to recover 59 rupees, 5 annas, principal and interest of a bond, alleged to have been given by the respondent, on the 11th Jyete 1249 B. S., for 31 rupees. The moonsiff, not being satisfied with the evidence brought forward in support of the demand, dismissed the suit,—hence the appeal; and now the respondent, in a petition filed on the 12th current, confesses judgment, and agrees to pay by instalments the sum of 18 rupees, the balance adjusted between him and the appellant. A decree therefore to this effect to be drawn up, and the parties to pay their respective costs.

THE 29TH JUNE 1850.

No. 20 of 1848.

*Appeal from the decision of Sreenath Bidyabagish, Sudder Ameen of Bograh, dated the 20th November 1848.*Kenoo Consomer and Goonoo Consomer, (Defendants,) Appellants,
versus

Unjun Bewah, (Plaintiff,) Respondent.

THE respondent instituted this suit on the 16th March 1847, to recover possession of certain *jotes*, or plots of rent-paying and *lakhiraj* land, made over to her, it was alleged, by deed of *hibba bil ewuz* by her husband, Surap Khan, *consomer*, in lieu of dower, and also, as his *widow*, she claimed the price of certain ornaments and other property forcibly taken from her by the defendants, who were her husband's relatives. Total amount of the claim, rupees 617, 4 annas.

The sudder ameen, on the deed of gift, adjudged half the lands claimed (as that was all the plaintiff's husband was entitled to) and mesne profits in proportion from the month of Poos 1253 B. S. The claim to the price of ornaments and other articles, he totally rejected, as there was no proof of their having been taken from the plaintiff.

Against this decision the defendants appeal, and urge, as in their answer: *First*.—That the plaintiff was never married to Surap, who was the brother of Kenoo, appellant, and that the deceased had never made over to her by deed of gift any lands whatever.

Secondly.—That the deed filed was not registered, and that the deceased being only a joint shareholder in the *jotes* he had

no authority to alienate the whole by deed of gift: and though it was out of the question that they should be parties to such a deed (making away with their property) still the names of Kenoo and Goonoo were both affixed to it as attesting witnesses.

The appeal was admitted on the 29th December last, and both parties ordered to attend *personally*, to ascertain if they would be examined on a solemn declaration, and on the examination given agree to the case being decided.

The appellant Goonoo attended, but the respondent pleaded being a *purdah nusheen*. They were therefore examined on interrogatories through the moonsiff to the respondent's marriage with Surap Khan, but this has not elicited more than there is already in the pleadings. Respondent insisting she was married to him, and the appellants that she was a slave, and one Abdul Rub had got up the case against them. The whole question turns on the marriage and validity of the deed of gift, and as the plaintiff sued on the deed, I may notice that it was originally drawn out on a stamp of 2 rupees, and an additional stamp for 6 rupees affixed to it afterwards at the stamp office. This would not affect the validity of the deed; but when the sudder ameen decided that property, or a share of property, was by it conveyed away which did not belong to the *donee*, and it is found that the names of parties are affixed to the deed as witnesses, whose property is thus conveyed away, and who, it is out of all probability, would tamely consent to the alienation of their rights to another, this throws great suspicion on the document; and to uphold the plaintiff's right to *half* the property so made, or conveyed away, was not only inconsistent with the provisions of the deed, but opposed to an *ikrar*, also filed or given in by the respondent, and which she alleged Goonoo had given to her, but this he denied. In my opinion both the deed, or *hiba-bil-erouz*, and *ikrar*, were fabricated to bolster up the claim, and therefore I reject both, decree the appeal, reverse the sudder ameen's decision, and dismiss the respondent's entire claim under the *hibanameh*, and make all costs of the appeal chargeable to her. This however will not affect her right to sue for what she may be entitled to as widow of Surap Khan, under the Mahomedan law, but this, again, only for his landed property.

ZILLAH RUNGPORE.

PRESENT: T. WYATT, ESQ., JUDGE.

THE 13TH JUNE 1850.

No. 1 of 1849.

*Appeal from the decision of the Principal Sudder Ameen of the 2nd
January 1849.*

Mussamut Shiddheshree Chowdhraïn, wife of Radhakaunt
Chowdhry, (Plaintiff,) Appellant,

versus

Mussamut Bijoia Dossea, (Defendant,) Respondent.

THIS suit was instituted to set aside the summary order of the sudder ameen of the 30th November 1843, passed in execution of the decree of the principal sudder ameen of the 20th August 1836, and of the summary order of the judge, on appeal, dated 7th September 1844, confirming the said order of the sudder ameen, and requesting the enforcement of the decree of the principal sudder ameen of the 20th August 1836, above cited, awarding to the plaintiff's possession of mouzah Hungshuraj to the extent of 12 gundahs and 9 teels.

The principal sudder ameen, under date 2nd January 1849, dismissed the plaint, after entering into the merits of it, and passing an order that the principal sudder ameen, on the 20th August 1836, only decreed four bissees and a half of the mouzah in question in favor of the plaintiff; which was all plaintiff was entitled to.

On reviewing the case, on appeal, I reject the appeal, nonsuiting the original plaint, and reversing the order of the lower court, as it irregularly re-tried a case which had already been tried on appeal from the decision of the sudder ameen and decreed by the principal sudder ameen, under date the 20th August 1836, which decree the decreedar is at liberty to carry into execution according to the order of the sudder ameen of the 30th November 1843, passed in execution of the decree, and which, on appeal, was upheld by the judge on the 7th September 1844.

The respondent will receive from the appellant one-fourth of the costs of suit preferred to the principal sudder ameen.

but in making the deposit he has included in his account other debts which are unconnected with the original deed of advance.

The objections raised by the old farmers in possession are not considered reasonable. They claim the right of retaining possession until other debts due by the maliks to them be liquidated, amounting in the aggregate to Company's rupees 1041, 6 annas, 10 pie, (including this claim), but it does not appear that this share was specially pledged for those debts, yet the moonsiff unaccountably has admitted this plea, and has entered into the circumstances of those debts irrelevant to the present cause of action, and which should not have been entertained in this suit, and considers it unjust to cancel the old lease until all other claims by the old farmers against the maliks be adjusted.

	350			
	43			
27	6	6		
420	6	6		
392	1	2		
Co's. Rs. 28	5	4		

Admitting therefore so much of the deposit, viz., Company's rupees 350, principal, and rupees 43, on account of interest (at 14 rupees, 5 annas, 4 pie, for three years,) and 27 rupees, 6 annas, 6 pie, on account of the bond, dated 20th Sawun 1250 Fussily, with interest, (which sums plaintiff was by the terms of his engagement bound to pay to the former ticcadars,) a balance of Company's rupees 28, 5 annas, 4 pie only appears to be due, and on payment of which plaintiff is entitled to possession of the share as farmer on advance. The remaining claims of the former peshgeedars against the maliks are not admissible in this suit, because the property in dispute was not pledged as security for payment of those debts.

For the above reasons this appeal was admitted on the 13th May last, and notice was served on the respondents, Ramnarain and Choar Lal, who maintain that the property should not be released until the full amount due to them by the maliks has been liquidated; but, for the reasons above assigned, the objections taken by the former farmers in possession are not admissible, as they can only claim to *hold* possession upon the *terms* of the agreement upon which they originally *acquired* possession.

ORDERED,

That the moonsiff's decision be reversed, and the plaintiff, on payment to the lessees in possession, of the balance of Company's rupees 28, 5 annas, 4 pie, due by the maliks, Kishnaram and Musst. Chamelec, be entitled to possession of their share, but without mesne profits, and the costs of suit be liquidated by the said maliks, defendants, by precaution, who have occasioned this unnecessary litigation.

THE 13TH JUNE 1850.

No. 27 of 1847.

*A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq,
late Principal Sudder Ameen of Sarun, dated 18th June 1847.*

Chukkerdharry Singh, Gobind Singh, Musst Rajbunsee Koer, and
Kishwar Singh, (Defendants,) Appellants, .

versus

Jhomon Lal, Reton Lal, Koonjbeharry Lal, and Rajbullub Singh,
(Plaintiffs,) Respondents.

CLAIM, for confirmation of possession of 639 beegahs, 15 cottahs, 12 dhoors, and 10 dhoorkees of land in Madhopoor, pergunnah Kusmer, ancestral property, and for reversal of the settlement order passed by the revenue commissioner of Patna, dated 28th December 1844; valuation Company's rupees 2064.

This suit was instituted on the 2nd June 1845. The ruqba, or area of Madhopoor, pergunnah Kusmer, was originally recorded at 870 beegahs; of this quantity of land the revenue authorities, on 19th April 1839, settled beegahs 215-19-7 (which was undisputed) with plaintiffs as the heirs of Debidut, and the remainder 654 beegahs and odd cottahs, (being found in possession of the proprietors of Kedenpoor, Bubungawun, Hetapoor, and Puclapoor, (surrounding villages) was settled by order of the commissioner with those in possession, referring the plaintiffs to the civil court.

The deputy collector, Ibrahim Ali Khan, in his proceeding, dated 15th April 1839, computed the remaining lands at beegahs 654, 13 cottahs, and declared them to belong to Madhopoor; and in appeal the special deputy collector, as stated in his proceeding, dated 28th December 1840, found beegahs 606, 15 cottahs, 13 dhoors, 15 dhoorkees, situated in Madhopoor. The special commissioners in a proceeding, dated 30th August 1843, upheld the foregoing order, noting that a suit in court was necessary to establish plaintiffs' right. On the 24th August 1844, the collector settled, under the provisions of Clause 1, Section 4, Regulation XI. 1825, beegahs 632, 5 cottahs, 12 dhoors, 15 dhoorkees with plaintiffs, viz., beegahs 606, 15 cottahs, 13 dhoors, 15 dhoorkees adjoining Kedenpoor, and beegahs 25, 9 cottahs, 19 dhoors adjoining Bubungawun at rupees 688, 7 annas. Against this order, an appeal was preferred to the commissioner of revenue, who, on the 18th December 1844, noticed that Debidut, the plaintiffs' ancestor, had admitted, in his petition, the possession of Kunnya Singh and others of Kedenpoor before attachment, and under Circular Order, Board of Revenue, 19th May 1841, No. 160, declared the *parties in possession entitled to settlement*, and accordingly reversed the collector's order, directing settlement to be concluded with Kunnya Singh, &c. In this proceeding the

jumma is noted at 688 rupees. Kunnya Singh and others accordingly petitioned for settlement, noting that beegahs 639, 15 cottahs, 11 dhoors was the quantity of land in their possession. This petition was accepted by the collector on the 5th April 1845, and an "umul dustuk" issued, fixing the rental of the deara land appertaining to Madhopoor permanently at a rental of 688 rupees, from 1253 Fussily, as directed by the commissioner's proceeding, dated 18th December 1844. The present suit is instituted by the proprietors of Madhopoor to reverse the above order, and to obtain possession as proprietors of the quantity of land specified in defendant's ~~account~~ petition, viz., beegahs 639, cottahs 15, dhoors 12, dhoorkees 10, as appertaining to Madhopoor.

The principal sudder ameen, on the 22nd November 1845, held a proceeding under Section 10, Regulation XXVI. 1841, calling upon the parties to file their proofs in support and in refutation of the allegations set forth by them respectively, and, after a lapse of a year and half, viz., (on the 18th June 1847,) decreed the lands claimed by plaintiffs, upon the ground that the settlement officer's proceedings proved that the said lands belonged to the village Madhopoor, and defendants, in their petition for settlement, dated 5th April 1845, had themselves styled the lands as a "deara" belonging to Madhopoor, and that defendants had not established their right or possession, and their witnesses were not to be credited, and possession of plaintiffs previous to the attachment, encroachment of the river was fully established.

Defendants appeal to this court in dissatisfaction.

JUDGMENT.

This case must be returned to the principal sudder ameen's court for re-trial; *first*, because the points at issue have not been drawn by the lower court in conformity to law, (Section 10, Regulation XXVI. 1841;) *secondly*, because a certain number of beegahs have been decreed without specifying their limits or boundaries; *thirdly*, because the award of beegahs 639, cottahs 15, dhoors 12, dhoorkees 10, is founded solely upon a petition of the adverse party, dated 5th April 1845, without any enquiry or proof of such being the precise quantity of land appertaining to Madhopoor in excess of the land already permanently settled with the proprietors of that mehal; and *fourthly*, because the additional quantity of land decreed as appertaining to Madhopoor does not accord either with the ruqba or the quantity stated in the proceedings of the settlement officers, who measured the estate preliminary to settlement.

ORDERED,

That this appeal be decreed, with refund of stamp duty in the petition of appeal, and the decision of the lower court be annulled, and the suit be returned to the principal sudder ameen's court for re-trial with reference to the foregoing remarks.

THE 15TH JUNE 1850.

No. 32 of 1847.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 21st July 1847.

Gouree Dut, Hurrehur Dut, and Ramashur Dut, (Defendants,) Appellants,

versus

1, Bydnath Rai and 2, Sheonaraien Rai, sons of Omrao Rai, 3, Huruk Rai, 4, Ishree Rai, 5, Bisheshur Rai, 6, Chutter Rai, and 7, Musst. Kawul Koer and 8, Musst. Bhodee Koer, wives of Bhodee Rai, (Plaintiffs,) Respondents.

CLAIM, for registration of names as proprietors, in lieu of defendants, on the Government rent roll, and for separation and division of their shares in the entire estate of Lahejee, pergunnah Burreye; valuation Company's rupees 201, 9 annas, 9 pie.

This suit was instituted on the 2nd February 1846. Ishur Dut, the father of defendants (appellants,) executed a bill of sale under date 16th September 1831, in favor of Omrao, Ishree, Hurruk, and Bhodee, for the entire estate of Lahejee in the following proportions, viz.:

12 annas to Omrao and Ishree,	for Sicca rupees,	7,896	0	0
4 annas to Hurruk and Bhodee,	„	2,632	0	0

Total, Sicca rupees, 10,528 0 0

and gave the vendors possession, and upon the same date took from the vendors an ikrarnamah (agreement,) stipulating that if the aggregate amount of purchase money was repaid by the end of Bhadoon 1253 Fussily, (five years,) the sale was to be cancelled and the property restored. A separate receipt bearing the same date was granted by the vendors, acknowledging the payment of the purchase money in full. Omrao has since died, and his two sons, Bydnath and Sheonaraien, have succeeded. Ishree and Hurruk are alive. The former has sold 3 annas out of his 8 annas share to Hurruk, and 1 anna to Bisheshur and Chutter; and the widows of Bhodee Rai are in possession of their husband's 2 annas share. The shares of the several claimants are therefore as follows:

Heirs of Omrao,...	...	...	...	...	...	4	annas.
Ishree, ...	...	...	...	...	...	4	„
Hurruk, ...	...	...	...	...	...	5	„
Heirs of Bhodee,	...	...	...	...	...	2	„
Bisheshur and Chutter,	...	...	...	...	...	1	„

16 „

Defendants, sons of the vendors, admit the bill of sale and separate agreement rendering it a conditional mortgage, but plead, *first*, that 494 rupees of the purchase money was not paid; *secondly*, that the usufruct had more than covered the principal with legal interest, and that a balance of rupees 9684, 5 annas was due to them account of excess collections; and *thirdly*, that the prescribed notice under Section 8, Regulation XVII. 1806, was not served; quoting Section 10, Regulation XV. 1793, and Regulation I. 1798, and the Construction No. 15, of 18th December 1808, and Construction No. 146.

Musst. Perkashee Koer, a *third* party (widow of Ramhurree Rai,) claims three-fourths of Ishree's share by right of inheritance.

This case on account of its small value was originally instituted in the moonsiff's court, but subsequently transferred to the court of the principal sudder ameen,—the defendants having instituted in that court a counter suit for possession, and refund of the excess collections above adverted to, but which suit has been dismissed by the principal sudder ameen, with costs.

The decision of the principal sudder ameen in the present suit is as follows. He is of opinion, *first*, that the evidence adduced satisfactorily proves payment of the purchase money in *full*, and if any balance had remained a separate acknowledgment would have been taken; *secondly*, that the counter suit of defendants for possession and refund of excess collections has been separately tried, and *dismissed* in his court, as the fact of realizing from the lands more than sufficient to cover the interest of the share had not been proved; and *thirdly*, that the peon entrusted with the "notice" had sworn to its delivery and produced two receipts, and although the attesting witnesses (servants of defendants) had pleaded ignorance of the transaction, one of the three (Hunman) had previously sworn to payment in full before the register of deeds, showing that the witnesses were not to be credited;—passing a decree in favor of plaintiffs in the proportions above recorded, with full costs. The third party (whose claim it was considered unnecessary to enquire into) was directed to pay her own costs.

JUDGMENT.

The pleadings in this suit having been originally filed in the moonsiff's court in 1846, no proceeding was held, under Section 10, Regulation XXVI. 1814, but on receipt of the record in the principal sudder ameen's court by transfer, that officer should have drawn the issues of fact and law, and not satisfied himself with merely calling on the parties to file their proofs *pro* and *con*, within a given time.

The plaints at issue have been correctly recorded in the principal sudder ameen's *final* decision, viz., first, whether the purchase money, as asserted by plaintiffs, was paid in full, or *minus* rupees 494,

as alleged by defendants; *secondly*, the validity of the plea advanced by defendants that the amount borrowed with legal interest had been more than realized from the usufruct; and *thirdly*, whether the notice under Section 8, Regulation XVII. 1806, had been duly served or not.

In regard to the first point, there can be little doubt that the money was paid in full. A stamped receipt (bearing a corresponding date with the bill of sale) and sealed by the kazee, and registered with the bill of sale, is forthcoming, and has been duly attested; and the execution of that document is not denied by the defendants in their answer, and at the time of registering these documents, payment in *full* was admitted, and sworn to by the attesting witnesses.

Secondly, the plea of having realized the debt in full from the usufruct has been disposed of in a separate suit, and I observe that the principal sudder ameen's decision, dated 21st July 1847, dismissing the suit of appellants in this case, was affirmed by the Sudder Dewanny Adawlut, on the 11th July 1848. I am therefore precluded from entering further into that plea. It may, however, be remarked that no deposit was made of the principal amount due to plaintiffs, (regarding it as a conditional sale,) "on or before the stipulated date," which was necessary to preserve to the borrower the right of redemption under Section 2, Regulation I. 1798, leaving the interest to be settled on an adjustment of the vendor's receipts and disbursements during the period they were in possession. This suit, it must be understood, was instituted by the mortgagees for foreclosure *after* the period limited in the deed had expired, and not by the heir of the mortgagee, whose suit to recover possession has duly been heard and dismissed.

Thirdly, in regard to the serving of the notice, two receipts bearing the defendants' signature are filed, and although the defendants' servants or dependents, whose signatures are affixed, are instructed to deny their authenticity, the affidavit of the court's peadah who served the notice must be considered more trustworthy than the dependents of an interested party. For the above reasons I consider that plaintiffs are entitled to the registration of their names as proprietors of Iahejee and to a partition of their respective shares, as applied for, in conformity to the provisions of Regulation XIX. 1814. It is observed that the third part has not preferred any appeal to this court.

ORDERED,

That this appeal be dismissed, with costs, and the decision of the principal sudder ameen in this case be affirmed.

THE 15TH JUNE 1850.

No. 31 of 1847.

A Regular Appeal from a decision passed by Moulee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 24th June 1847.

Oochai Lal, Rampertab Singh, 1st, Soobrun Singh, Heeralal, Rampershad Singh, Nursing Lal, Rambunjun Singh and Rampertab Singh, 2nd, (Plaintiffs,) Appellants,

versus

The Collector of Sarun, Sheogolam Singh, Soopraj Singh, and Motee Singh, (Defendants,) Respondents.

CLAIM, to reverse an auction sale (made 19th December 1836,) and to obtain possession of 458 beegahs, 14 cottahs, 5 dhoor, 17½ dhoorkees of deara land in the villages Sarungpoor and Oobawa, pergunnah Goah, valuation (by amendment) Company's rupees 1367, 15 annas, 5 pie, including mesne profits.

This suit was instituted on the 15th March 1844. Plaintiffs alleged that the collector of Sarun, at the time these lands were under temporary settlement with Oochai, Shetab, and Soobkurn, for 130 rupees rental, (after investigation into the capability of the villages,) called upon them as the maliks to enter into a permanent settlement at a fixed rental of Company's rupees 351, 9 annas, 17 gundahs, 1 cowree, and which they declined, notwithstanding which the collector, on the 3rd June 1835, forced them to enter into a permanent engagement at the above high rate, and on the 19th December 1836, (when their appeal to the commissioner upon this point was pending) sold the "deara" land of the villages at outcry, for Company's rupees 550, to Sheogolam and Sheobuksh Singh, and that under such circumstances the sale was illegal. *First*, because the petition for a settlement (alleged to have been taken by force) had not been accepted; *secondly*, because the settlement officer, on Ramnugra Singh's petition, had told them to pay "as much of the revenue as they could afford;" *thirdly*, because their appeal to the court against the collector for forcing them into a settlement was pending; *fourthly*, because the permanent settlement was eventually cancelled by the revenue authorities, and a five years' farming lease was taken from the purchasers; and *fifthly*, because an advertisement was first issued for the sale of Sarungpoor itself, and afterwards a counter advertisement for the sale of Mobarukpoor, for the arrears due for Sarungpoor, claiming mesne profits for 1247 Fussily only when a lower rate of rent was taken from the farmers in possession.

The collector of Sarun denies the imputation of irregularity in the proceedings of sale, as well as the alleged application of force in effecting a permanent settlement, remarking that, under the orders of Government, No. 1303, dated 20th September 1836, estates are equitably liable to sale for the recovery of arrears of revenue

although the settlement has not been confirmed by Government, in cases in which the proprietors have formally consented to a settlement in perpetuity, and actually come under engagements accordingly; and that this sale had been duly confirmed by the commissioner and Sudder Board of Revenue, and the statement in regard to Ramnugra's petition was without foundation;—admitting that the maliks had petitioned on the 7th December 1836, to stay the sale pending the appeal, and had been required to deposit the arrears as the only condition on which the sale could be postponed.

The principal sudder ameen, after holding a proceeding under Section 10, Regulation XXVI. 1814, calling however for *specific* documents from the parties in support of their allegations respectively, (which specification it may be remarked was irregular,) dismissed the claim, upon the grounds that none of the conditions of sale, as recorded in Section 5, Regulation XI. 1822, had been violated, and the objections in regard to the advertisement had not been preferred to the commissioner of revenue.

JUDGMENT.

The point at issue in this case is the validity or invalidity of the sale under the provisions of Regulation XI. 1822. The *first* objection taken by appellant against the sale (under the orders of Government above quoted) are not tenable. The *second* allegation is not proved. The *third* objection is also insufficient, as the fact of the sale not having taken place until a year and half after the petition to engage, shows that there was no precipitancy in bringing the estate to sale for the arrears which had accrued, and ample time was afforded for obtaining redress, if the case demanded the interposition of the revenue appellate authorities. The *fourth* plea is deemed irrelevant, as the subsequent annulment of the settlement did not affect the position and liability of the estate for the consequence of arrears at the time when the sale took place. The *fifth* plea was not urged before the revenue authorities, and the failure is not accounted for, and which renders it inadmissible in the civil court under Section 25 of the Regulation above cited.

In the above reasons it is clear that none of the conditions of the validity of a public sale under Section 5, had been violated, and a sale under that law is not otherwise liable to be set aside by a court of judicature, after having been duly confirmed by the superior revenue authorities.

ORDERED,

That this appeal be dismissed, with costs, and the decision of the lower court be affirmed.

THE 23RD JUNE 1850.

No. 35 of 1847.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 30th July 1847.

Hurruk Opadea, (Defendant,) Appellant,

versus

Shecodeal Saho, (Plaintiff,) Respondent.

CLAIM, for possession of 6 annas share of Dhunraj,

3 " " Pakree,

6 " " Soogree,

pergunnah Goah, estimated value (including mesne profits) Company's rupees 1503, 4 annas, 4 pie.

This suit was instituted on the 20th November 1846. It appeared that Hurruk and Doobree, maliks of the above villages, took a loan of Company's rupees 5502 from plaintiff, directing him to pay off Benuk and Ruttoo, the farmers in possession, their previous loan of Company's rupees 5000, in certain proportions, and take possession. The amount taken and to be paid by each malik was specified in the deed, namely, Doobree was to pay rupees 1500 to Benuk and rupees 2000 to Ruttoo; and Hurruk was to pay rupees 1500 to Benuk, leaving a balance of rupees 501 cash in Hurruk's hands; but the above shares were pledged conjointly by the maliks with this condition that the new farmer, in consideration of the advance made by him, was to hold possession from 1254 to the end of 1258 Fussily, when the advance was to be repaid in full, and in one payment, otherwise the farmer was to continue in possession until, at the end of any subsequent year, the whole sum might be liquidated.

Plaintiff states that he duly paid off the former farmers, and has got possession of Doobree's share, but that Hurruk has not given him possession of his half share, on the plea that, after the deed was executed and the money paid, he (Hurruk) had offered to refund rupees 2001, his portion of the advance, but which was refused as being contrary to the terms of the agreement. The 2001 rupees were accordingly deposited in court, but being refused by plaintiff, Hurruk was informed that he was at liberty to take it back.

The defendant Hurruk urges that, having offered to refund his share of the loan before possession was given, plaintiff was bound to take it, and to cancel his portion of the agreement, and consequently this suit to recover possession is not tenable, citing a case decided by a former judge of this court in 1825, (8th March,) as a precedent in support of his argument.

The principal sudder ameen held a proceeding under Section 10, Regulation XXVI. 1814, calling upon the plaintiff for the lease and upon the defendant for his precedent, but without drawing the issues of fact and law as required by that enactment. I, however,

concur with that officer's decision upon the merits of the case. He rightly observes that defendants' plea, proposing to cancel the deed before the expiry of the period stipulated, is opposed to the terms of the engagement, and that the precedent quoted was insufficient to controvert that fact; and accordingly decreed for plaintiff with wasilat from 1254 Fussily to date of possession in such amount as may be ascertained in execution of this decree. . . .

JUDGMENT.

It would appear that defendant has misunderstood the terms of the engagement; for, although the money was advanced to each malik in certain proportions, and they engaged to pay off the farmers in possession in certain fixed sums each, the contract further stipulated that the lease should continue until the end of 1248 Fussily, or any subsequent year, and there was no condition for cancelling the lease by an intermediate payment; and, moreover, although the amount was taken from each in shares, it was agreed that the whole amount was to be repaid after a certain time in *full* and *at once*, and plaintiff was justified in refusing to cancel the lease or any portion of it, on the offer of part payment only *within* that time. In regard to the plea of possession not having been given, I observe that there was no time fixed for giving possession. The contract, however, must be considered as complete after the deed was duly executed, signed, and delivered, and the money paid. The precedent quoted is irrelevant, for in that case the *whole* amount was offered, and refused, but even, in this case, if repayment of the whole amount had been offered, the farmer was not bound to cancel the lease before the expiration of the term specified. A similar case is cited in the Sudder Dewanny Reports, volume VII, page 53, where it was distinctly ruled that, in a case of mortgage executed by several proprietors of a village without specification of shares, who jointly received the loan, and bound themselves to repay it in one payment, *one* of the proprietors could not redeem his own particular share on depositing his alleged portion of the share.

ORDERED,

That this appeal be dismissed, with costs, and the decision of the principal sudder ameen be affirmed.

ZILLAH SHAHABAD.

PRESENT : H. B. BROWNLOW, ESQ., JUDGE.

THE 15TH JUNE 1850.

No. 6 of 1849.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen of Shahabad, dated the 29th December 1848.

Maharaja Issroc Persaud Narain Singh Bahadoor and Baboo
Baneepersad Singh, (Plaintiffs,) Appellants,

•
versus

Pudarutte Kour and twenty-nine others, (Defendants,)
• Respondents.

THIS suit was instituted by the plaintiffs (appellants) on the 16th March 1847, for the possession of 2000 beegahs, comprised in mouzah Puraree, attached to mouzah Chooa Chahar, appertaining to talooka Ramghur, pergunnah Chynpoor, by the reversal of an order issued by the deputy collector employed in the surveys, dated the 8th November 1845, at the valuation of rupees 1370, and for mesne proceeds of the same for the years 1253 and 1254 F., amounting to rupees 150-12. •

Plaintiff states that mouzah Chooa Chahar is composed of four mouzahs situated in talooka Ramghur, pergunnah Chynpoor, and was settled in 1197 F. That it consists of two lots, one, an eleventh share, being in the occupation of Baboo Mohess Narain Singh, the other being a ninth share, which was formerly the property of Surrubjeet Singh, the father of Meherban Singh, has by purchase come into the possession of the plaintiff. That of the four mouzahs of which Chooa Chahar is composed, mouzah Puraree, one of them, is bounded on the east by the Bugnareh nulla and a bir-tree denominated Byt-ka-bir, south by a rock designated Teladeh Kindh, adjoining the boundary of mouzah Landhee, talooka Toree, west by the limits of mouzah Chooa Khas, and north by the confines of mouzah Bujgerdeewah, the property of the plaintiff. That within these boundaries of mouzah Puraree, certain places called Bhuglee Kullan and Bhuglee Khoord, jowar Kho and Kuchoohur, were in possession of the plaintiffs, who appropriated the produce of the

same, but that in the progress of the survey upon the objections of Pudarutte Koonwur and other defendants, the maliks of Mukree Kho, and of Baboo Goordeal Singh and other maliks of mouzah Toree, the settlement of the boundaries of these estates was made over to the deputy collector, who, for the reasons stated in his proceeding of the 8th November 1845, adjudged so much of Bhuglee Kullan, &c., as lay to the west of the eastern boundary of mouzah Puraree, to mouzah Mukree Kho, and awarded it to Musst. Pudarutte Koonwur and others, the principal defendants. That this award of the deputy collector was upheld in appeal by the superintendent of surveys. That the lands which have been decided by the deputy collector to belong to Mukree Kho have some mahoa trees standing on them, for the produce of which the plaintiffs have sued and obtained a decree in their favor; and that when the ancestors of Pudarutte Koonwur sued for rupees 9-13-2, the mesne profits among other mouzahs of Puraree and jowar Kho, their suit was dismissed with an intimation to them to sue for possession.

Musst. Pudarutte Koonwur, Hur Churn Koonwur, and Byjnath Koonwur urge that the land claimed by the plaintiffs is part and parcel of their estate called mouzah Gurmut and Mukree Kho.

The principal sudder ameen dismissed this case and upheld the boundaries laid down by the revenue surveyors, being of opinion that the land *sub lite* appertained to the estate of the defendants.

The appeal contains no fresh matter but a repetition of the facts detailed in the plaint, to prove the right of the appellants to the lands sought, and to impugn the award of the deputy collector and superintendent of surveys.

The boundaries laid down by the deputy collector of the several mouzahs of Gurmut, Toree, and Puraree, are most fully and clearly set forth in his roobukaree of the 8th November 1845, as are also the reasons which enabled him to come to these conclusions. The land was surveyed most carefully by him, the *pros* and *cons* of each party more deliberately considered, and the evidence of a number of persons taken on the spot; and there is nothing now before me to induce me to question the propriety and soundness of that decision. It is true that the appellant urges, and produces as a bar to the defendants' claim, two proceedings of the civil courts, dated the 29th January 1825 and 9th November 1838; but in the opinion of the deputy collector and the principal sudder ameen they were both deemed inapplicable. No judicial decision on its merits was passed in the former, I observe, as the case was nonsuited only and not dismissed; and in the latter the parties to that case and the present are entirely separate and distinct. Under these circumstances, I can find no ground for interference with the judgment of the lower court, which is hereby confirmed, and the appeal dismissed, with costs.

THE 17TH JUNE 1850.

No. 18 of 1849.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen of Shahabad, dated 19th February 1849.

Baboo Issree Singh and fifty-five others, (Plaintiffs,) Appellants,

versus

Gungaram and seventeen others, (Defendants,) Respondents.

THE particulars of this case will be found at pages 17 and 18 of the Zillah Decisions for March 1847. For facility of reference they are here subjoined:

“Claim for possession of 205 beegahs of land, with profits for the year 1257 F. S. Suit laid at rupees 2767-8.

“The plaintiffs claim this land as forming part and parcel of their estate of Arigaon, whilst the defendants, on the contrary, assert the same to belong to their zemindaree of Ruhya.

“Maps of the disputed ground were put in by both parties, and an ameen specially deputed to carry on a local investigation, a vast number of witnesses also were examined on either side, as also sundry exhibits put in; and the principal sudder ameen, after alluding to the boundaries and the general features of the case, dismissed the claim on the 23rd September 1845.

“In appeal, the case was remanded by my predecessor for re-investigation, in order that, if possible, it might be settled by arbitration, but if not, the principal sudder ameen was directed to go himself to the spot and test the accuracy of the maps furnished by the parties themselves as well as by the ameen.

“Arbitration failed; and the result of the local enquiry held by the principal sudder ameen satisfied him that the ameen’s map was a faithful sketch of the disputed ground, measuring 315 beegahs, 15 biswas, and 13 dhoors—that the plaintiffs’ map was untrustworthy, inasmuch as other boundaries were recorded by them in the year 1821, before one Bunse Gopal arbitrator, when squabbles were going on regarding a certain portion of the very plot now *sub lite*, whilst the defendants’ map represented the boundaries of Ruhya to be throughout the same. With reference to this and to the evidence of defendants’ witnesses, which clearly proved the land to belong to the Ruhya zemindarree, and to the other circumstances recorded in his roobukaree of the 23rd September 1845 and 17th July 1846, he again dismissed the case, adjudging the land to belong to Ruhya and not to Arigaon.

“In appeal, it was ruled that the plaintiffs had been allowed to file documents in prosecution of their suit after they had incurred the penalty of default under Act XXIX. 1841. The exhibits were called for on the 12th March 1845, but were not brought forward until the 10th June following.

"The proceedings of the principal sudder ameen therefore being illegal, the case was remanded for re-trial; the usual order being passed for refund of stamp value."

In accordance with the injunctions issued by this court, the case was accordingly dismissed on default by the principal sudder ameen on the 7th April 1847, under the provisions of Act XXIX. 1841.

Being once more revived, however, as an original suit, copies of the previous evidence were put in by the respective parties, and the principal sudder ameen, without recording any reasons in the present instance, but simply referring to his previous judgment of the 17th July 1846, has again dismissed the case. This is clearly irregular and entirely opposed to the practice of the courts, as a decree should be complete in itself. In the Circular Order No. 32, of the 26th November 1847, there is a rule laid down regarding the admissibility of evidence given in a previous suit, which has been nonsuited, and under the spirit of that Circular I see no objection to the adoption of a similar rule in cases struck off on default under Act XXIX. 1841; but it is unquestionably incumbent on the court to record a new judgment, and to assign satisfactory reasons for the same.

This having been entirely omitted by the principal sudder ameen, the case is remanded for re-trial, and the usual order will pass for the refund of stamp value.

THE 18TH JUNE 1850.

No. 20 of 1849.

Regular Appeal from the decision of Syed Munour Allec, late first grade Principal Sudder Ameen of Shahabad, dated 14th March 1849.

Pertabnara Singh, (Plaintiff,) Appellant,

versus

Palung Roy and four others, (Defendants,) Respondents.

THIS action was brought by the plaintiff (appellant) on the 10th March 1848, for the recovery of rupees 1465-15, being the usufruct of 81 beegahs of land, situated in mouzah Buhorah Dulloopoor, pergunnah Chowda, from 1245 to 1252 F.

The plaintiff alleges that he purchased mouzah Bahoorah Dulloopoor at an auction sale, but, owing to the opposition of the ex-proprietors of mouzah Rusend Yeaherpoor, &c., he failed in securing possession of 81 beegahs of land. That he sued them together with the Government, and obtained a decree in his favor on the 15th January 1838, the land in question being proved to appertain to mouzah Bahoorah Dulloopoor. That upon the enforcement of this decree, Surnam Roy and Hurnam Roy objected, urging that they held mouzah Rusend Yeaherpoor in conditional sale from the late proprietors, and the plaintiff was in consequence not put in posses-

sion till the 27th July 1845, when their objections were overruled. That as the plaintiff has been kept out of possession on account of the undue resistance of the defendants, he is entitled to the usufruct of the land from 1241 to 1252, when he regained possession, but as the law of limitation is a bar to his claim till 1244 F., he sues only from 1245 to 1252 F.

Surnam Roy, Hurnam Roy, and others, defendants, answer that the plaintiff purchased mouzah Bahorah Dullpoopor in 1240 F., at which period they held mouzals Rusend Yeaherpoor and Muhesh Dehree in conditional sale from the former proprietors, and had an annual assignment of rupees 120 from the lessees of the estate in liquidation of the interest of their money; that about this time the plaintiffs prosecuted Juggut Roy and others for 81 beegahs and obtained a decree on confession of judgment; but that the defendants were neither concerned in the suit, nor were they cognizant of it, and that the defendants having had the conditional sale declared absolute, sued and obtained possession only in 1251 F. Hence the plaintiff can have no claim against them.

Juggut Roy and the rest of the defendants, have tendered no answer.

The principal sudder ameen decreed this case in favor of the plaintiff for the sum claimed, but exonerated Hurnam Roy, Surnam Roy, Resoul Roy, Lall Mokund Roy, and Palna Roy, defendants, remarking that they were not guilty of the opposition to which the plaintiff attributed his dispossession.

The appellant objects to the exemption of respondents, contending that they are equally liable with the others for his claim; but with advertence to the grounds set forth in the judgment of the principal sudder ameen for exonerating those named, I see no grounds for interference, and in confirming the decision of the lower court, I dismiss the appeal, with costs.

THE 28TH JUNE 1850.

No. 19 of 1849.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen of Shahabad, dated 17th March 1849.

Ajooba Singh and four others, (Plaintiffs,) Appellants,

versus

Runjeet Singh and six others, (Defendants,) Respondents.

THIS suit was instituted by the plaintiffs (appellants) on the 4th May 1848, for the recovery of rupees 617-15-2, being principal and interest of law charges, by the reversal of two miscellaneous orders, issued respectively on the 1st July 1839 and 8th April 1846.

The plaintiffs state that one Sirdha Singh, at the instigation of Rugbeer Singh, the father of Hunooman Singh, prosecuted them and the ancestors of some of them for a certain share in some landed

property, valued at rupees 1175-15-7, on the 26th August 1830, and obtained a decree in his favor from the principal sudder ameen on the 4th February 1834, but that, while an appeal was pending from that decision before the judge, Sirdha Singh died, and Hunooman, the late brother of the defendants, appeared, and under a deed of gift (hibbeh-bil-iwuz) was permitted to represent the late Sirdha Singh. That the decree of the lower court was reversed by the judge, and Hunooman Singh made liable for the law charges incurred by the successful party in both courts, amounting to rupees 223-6. That this decree was put in force in the court of the additional principal sudder ameen, and some houses with a garden were attached, but subsequently released upon being claimed by Rugbeer Singh, the father of Hunooman Singh. That the decree was enforced a second time and Rugbeer Singh again protested, alleging that Hunooman Singh, his son, having been adopted by Sirdha Singh, had no connection with him, which put a stop to further steps, by the additional principal sudder ameen having, upon this protest, on the 1st July 1839, struck off the case from his file. That Rugbeer Singh having since demised and been succeeded by Hunooman Singh and his brothers, and Hunooman Singh having also died and the defendants having taken possession of his estate, real and personal, the plaintiffs put the decree in force a third time, and attached the malikana and other rights of the defendants, in some landed property, but that, the defendants having denied succession to the estate of Hunooman Singh, the case was thrown out again under orders of the 8th April 1848. Hence this suit.

The defendants urge that Sirdha Singh was succeeded by Hunooman Singh, his adopted son, and made personally responsible for the law charges at issue. That Hunooman Singh consequently had no connection with the defendants, and died in Assin 1250 F., and that subsequently to the demise of Rugbeer Singh, Shah Kubbeer-ooddeen obtained a decree against the defendants as the heirs of Rugbeer Singh, and that their names have also been substituted in the book of mutations, without any allusion to or mention of Hunooman Singh, as co-heir with them of the late Rugbeer Singh.

The principal sudder ameen dismissed this case, observing that Hunooman Singh having been adopted by Sirdha Singh, and having maintained undisputed that relationship for more than 12 years, the defendants, though his natural brothers, could not be held responsible for the legal costs adjudged personally against him.

The appellants deny the alleged adoption of Hunooman Singh by Sirdha Singh, urging that if he were actually adopted, the deed of gift under which he appeared would have contained some mention of the fact, and himself would have alluded to it in his petition, but that Hunooman Singh purchased the real and personal property of Sirdha Singh, for rupees 2000, and was accordingly allowed to represent him in the appeal which was then pending. That

the adoption of Hunooman Singh has not been established by any evidence, but that on the contrary his widow is still in the house of the respondents, and holds possession of an eighth share of the estate of Rugbeer Singh, their common father.

The issues in this case, in addition to that recorded by the principal sudder ameen, are, whether proprietors holding jointly are liable for the satisfaction of a decree passed against one of their brethren, in a matter *purely personal* to such brother, as the heir and representative of another individual, in virtue of a deed of hibbeh-bil-iwuz, and also in the event of Hunooman Singh having been adopted by Sirdha Singh, whether he is or is not debarred from all right of inheritance to the estate of his natural father?

On referring to the proceeding held by the principal sudder ameen, under Section 10, Act XXVI 1841, I find that he restricted the issue of the case to the one point, viz., "whether Hunooman Singh became entitled to any share in the property of his deceased natural father or not?" The question of the adoption of Hunooman Singh by Sirdha Singh so prominently pleaded by the defendants was not even raised by the lower court. Considering therefore the proceeding of the principal sudder ameen, under Section 10, to be so exceedingly defective as to bar the satisfactory adjudication of the case in its present form, I remand the same for re-trial, with advertence to the foregoing remarks.

The usual order will pass for the refund of stamp value.

ZILLAH SYLHET,

PRESENT: H. STAINFORTH, Esq., JUDGE.

THE 3RD JUNE 1850.

No. 168 of 1849.

Appeal from the decision of Moulvee Warris Alee, Moonsiff of Nubbeegunge, dated 28th August 1849.

Sonamooddeen, Appellant,

versus

Budecoolzuman, Respondent.

APPELLANT sued for 25 rupees 10 annas, the principal due under a bond, *plus* 12 rupees 4 annas interest, stating that the term for which the interest was due was 11 months 24 days.

The moonsiff (Moulvee Warris Alee) decreed, *ex parte*, that appellant should recover the principal 25 rupees 10 annas, *plus* interest previously to the date of suit for 11 months 24 days, or 2 rupees, 12 annas, 8 pies, 1 krant, with interest to the date of realization, debiting respondent with half the amount of the stamp fees paid on account of the plaint, and he subsequently fined appellant, because the stamp vendor's signature was wanting to the endorsement of sale of the stamp on which the plaint is engrossed.

Appellant now urges that interest was due up to the date of suit for 3 years, 11 months, and 24 days, but that, by mistake, the term was stated as "11 months and 24 days" with omission of the "3 years;" and that he ought not to be deprived of part of the interest due to him for so obvious a *lapsus penne*, especially as the full amount of fees was paid to enable him to recover it; and he further urges that he was ignorant of the necessity of the stamp vendor's signature to the endorsement on the stamp on which his plaint is written, and that Clause 1, Section 18, Regulation X. 1829 is applicable to vakeels attached to the courts, and not to him.

JUDGMENT.

I fully concur in what appellant has urged.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be amended by the full amount claimed, with full costs being decreed, and that the fine be remitted.

THE 3RD JUNE 1850.

No. 84 of 1850.

Appeal from the decision of Baboo Chunderkishwur Rai, Moonsiff of Hingajeeah, dated 16th April 1850.

Sahebram Surmah, Appellant, •

versus

Mahomed Uzeem and others, Respondents.

APPELLANT, formerly nonsuited, again sued for possession, with mesne profits, of 1 pao of land appertaining to talooka Komederam, which respondents had annexed to their land in 1254 B. S., by changing the course of a path.

Mahomed Uzhur and Mahomed Nazim, respondents, resisted the claim, pleading that the land in suit appertained to talooka Shumsoddeen, the property and possession of Mahomed Uzhur and his brother; that neither appellant nor his seller ever had possession of it; that there are discrepancies between the plaint in this suit and the plaint in the former one; and that the southern boundary of the land in suit is the land of Mahomed Uzhur, and not the land of Gunesh Ram Deb, (which is the southern boundary of appellant's purchase.)

The moonsiff (Baboo Chunderkishwur Rai) distrusted the evidence of appellant's witnesses, as they lived at a distance from the place of dispute, and because they have stated that respondents had raised a small mound on the land, whereas he, the moonsiff, who visited the place, could not find one; while, on the other hand, respondents' witnesses had sworn that the land had been long lying waste, and that the seller to appellant never had possession of it: and, moreover, the declared southern boundary of appellant's land is the land of Guneshram, while the land of that individual does not lie south of the land in suit, &c. &c., and thus he dismissed the claim.

The gist of the petition of appeal is, that appellant's deed of purchase indicates the land in suit to be his; that his witnesses have proved it to be so; and that he prayed that the evidence of other witnesses, neighbouring landholders, might be taken.

JUDGMENT.

The case appears to me to have been very imperfectly investigated. It is not clear, from the evidence, to which talooka the land in suit, which has been long lying waste, belongs; and I think that the moonsiff should have taken the evidence of the witnesses named in appellant's petition of the 13th April, issuing subpoenas for their attendance, instead of ordering appellant to produce them, as he has done. Under these circumstances, it appears to me necessary to remand the case.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for enquiry as indicated above. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

THE 6TH JUNE 1850.

No. 91 of 1850.

Appeal from the decision of Mahomed Moazum, Moonsiff of Lutoo, dated 30th April 1850.

Nowab Alec, Appellant,

versus

Golab Ram, Respondent.

APPELLANT, sued for 18 months' hire of a saw.

Respondent resisted the claim, and stated that the saw was made over to him for the purpose of cutting wood for appellant, and that he would abide by appellant's oath.

The moonsiff (Moonshee Mahomed Moazum) dismissed the suit, finding that appellant would not attest the claim on oath, and deeming the evidence adduced by him unworthy of reliance, &c.

Appellant now urges that his claim is established, &c.

JUDGMENT.

The same three witnesses, who stated that they were present at the time the saw is asserted to have been given on hire, also say that they were present when an examination of accounts took place, and respondent agreed to pay the principal sum in suit, and further they all three say that their presence at appellant's house was purely fortuitous. These circumstances excite suspicion, which is heightened by appellant's refusal to swear to the truth of his claim. On the whole then I am constrained to hold with the moonsiff, that the claim is unproved.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 7TH JUNE 1850.

No. 94 of 1850.

Appeal from the decision of Baboo Ramtaruk Rai, Moonsiff of Lushkorpore, dated 14th May 1850.

Bheeramooddeen, Appellant,

versus

Ramkishun Chowdree and others, Respondents.

RESPONDENTS sued for the value of the fruit of a tar tree.

Appellant declared the tree to be his own and his brother's.

The moonsiff (Baboo Ramtaruk Rai) gave an *ex parte* decree for 3 rupees 2 annas, with costs in proportion.

Appellant now urges that, of respondents' witnesses, one has been punished for perjury, and the others are under his influence; that he took the money necessary for issue of a perwannah for the seizure of his witnesses, but found the suit disposed of; and that the witnesses could not have counted the fruit as it was night.

JUDGMENT.

The quantity of fruit claimed in the plaint is not disputed in the answer. Appellant neglected to proceed in the substantiation of his defence, and the evidence of respondent's witnesses is wholly un rebutted.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 7TH JUNE 1850.

No. 95 of 1850.

Appeal from the decision of Baboo Chunderkishwur Rai, Moonsiff of Hingajeeah, dated 15th May 1850.

Jugunnath Surmah, Appellant,

versus

Jye Govind Kur and others, Respondents.

THE decree of the moonsiff is illegal, seeing that he has not taken the evidence, as he was required to do by Section 21, Regulation XXIII. 1814, to the service of notice of suit against Janubee Dibe, who did not appear, and against whom the decree is passed.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for the purpose as indicated above. The value of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

THE 8TH JUNE 1850.

No. 75 of 1850.

Appeal from the decision of Baboo Sharodapershad Ghose, Moonsiff of Ajmereegunge, dated 19th March 1850.

Ramchurrun Deb, Appellant,

versus

Ram Chunder Surmah, Respondent.

RESPONDENT sued for rupees 64, damages for abuse on two separate dates.

Appellant pleaded *alibi* on both dates, and that the suit was founded on enmity between appellant and one Deep Chunder.

The moonsiff, Baboo Sharodapershad Ghose, held that the abuse declared to have been given on the second day established, and decreed rupees 30 damages, with costs in proportion.

Appellant now urges that his defence is established, that there are discrepancies in the evidence of respondent's witnesses, and that the damages are excessive.

JUDGMENT.

I concur in thinking the abuse on the second day proved, but think seven rupees ample compensation for it.

IT IS THEREFORE ORDERED,
That the decree of the moonsiff be amended, by the amount of damages being reduced to seven rupees, with costs in proportion, and interest from the date of the moonsiff's decree.

THE 20TH JUNE 1850.

No. 53 of 1850.

Appeal from the decision of Baboo Hergouree Bose, Moonsiff of Russool-gunge, dated 21st June 1850.

Jatai Pal and Joogul Pal, Appellants,

versus

Ramchunder Gopt and Rajchunder Gopt, Respondents.

APPELLANTS sued to recover, with costs and twice the amount as penalty, 16 rupees 8 annas, including 1 rupee costs, which they had paid into the collectorate when Jatai Pal was seized by a piada deputed in a summary suit instituted by respondents from motives of enmity, with false pretence of their being tenants under a kubooleut, and defaulters on account of the year 1254 B.S., for the rent of 2 koolbas 7 kears of land in talooka Ramakant Rai, No. 6, of pergunnah Hurreenuggur, they not being tenants, but owners of land in talooka Jyram, No. 106 of the said pergunnah.

Rajchunder, respondent, answered, averring voluntary payment of the rent without objection, as soon as appellants were sued, and denying connection with cases in the magistrate's court mentioned by appellants, &c.

The moonsiff (Baboo Hergouree Bose) deemed the evidence of the three witnesses adduced by appellants insufficient to prove their statements, and holding the kubooleut and defence established by respondents' witnesses and the results of a local investigation by an ameen, dismissed the suit.

Appellants now urge that the cases in the criminal court, in which respondents were represented by their ryuts, were the ground of enmity which has led to this; that the kubooleut

is not attested; that the moonsiff was solicited to make a local enquiry into the case in person, the ameen's proceedings having been impugned, he not having examined persons living near the ground, but persons who live at a distance, and are really under respondents' influence, though called disinterested, and having kept two neighbouring landholders, Bashan Oollah and Tackee Oollah, in attendance without examining them, and further in having included, in his map of the land of the rent in suit, some land belonging to other persons, while some of the rest is old jungle, and some in the tenancy of respondents' ryuts, &c.

JUDGMENT.

This is not a satisfactory decision. The evidence on the part of respondents, on whom the *onus probandi* lies, is certainly not sufficient, in the absence of enquiry into the allegations against the ameen, to bear out their case, and I am of opinion that further local investigation should be made in person by the moonsiff, who will hear such evidence as Kishenkaunt Surmah, Rammohun Gopt, and oozurdars may adduce, and ascertain whether appellants have tenanted land belonging to respondents, according to the boundaries stated by the latter, under the kubooleut, in accordance with which, I observe, no rent had been paid till the sum in suit was received.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for enquiry as indicated above. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass orders regarding the remaining costs of appeal.

THE 20TH JUNE 1850.

No. 58 of 1850.

Appeal from the decision of Mahomed Moazum, Moonsiff of Latoo, dated 24th January 1850.

Mahomed Asin and Mahomed Zuman, Appellants,

versus

Mahomed Waris, Respondent.

RESPONDENT sued, on the 10th Kartikh 1256, for 30 rupees, damages for abuse and assault on the 12th idem, when he forbade appellants to plough his land, and he subsequently filed a petition stating the correct date of the abuse, &c. to be the 11th Kartikh.

Appellant denied abusing respondent, and Mahomed Zuman pleaded *alibi* from the 5th to the 17th Kartikh, and enmity on the part of respondent on account of a case of trespass, in which one of this defendant's ryuts was aggrieved.

The moonsiff (Mahomed Moazum) set aside the testimony of appellants' witnesses on account of discrepancies, and holding

respondent's statement and claim proved by the evidence of his witnesses, decreed the claim.

Appellants now urge, in addition to their old pleas, that the witnesses of respondent are his brother's ryuts, hackneyed witnesses; that the damages are excessive; and that the petition correcting the date of the alleged abuse has vitiated the plaint.

JUDGMENT.

The plaint does not appear to me vitiated by the petition correcting an error in it, but looking to the records of the cases received from the magistrate and the record room of this court, I find that the witnesses, on whose evidence the moonsiff's decree rests, are hackneyed witnesses, whose testimony must be received with caution; and as appellants name some witnesses, who are also named by respondent, I think that the suit should be remanded in order that their depositions be taken by the moonsiff, who will call for and examine the records of the cases mentioned by appellants before giving a decree in this suit.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for re-investigation as indicated above. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the other costs of this appeal.

THE 21ST JUNE 1850.

No. 81 of 1850.

Appeal from the decision of Baboo Ramtaruk Rai, Moonsiff of Lushkerpore, dated 15th April 1850.

Ramchurn Deb, Appellant,

versus

Shamram Dhobce, Respondent.

RESPONDENT sued for 15 rupees, 6 annas, 4 pie, stating that appellant, who was at enmity with his landlord concerning land, had caught him on the 6th Chyte 1255, confined and assaulted him, and compelled him to pay on the 7th idem, 15 rupees.

Appellant denied the extortion, and imputed the suit to the enmity of respondent's zemindar.

The moonsiff (Baboo Ramtaruk Rai) held the extortion proved by respondent's witnesses; and, after noticing that the evidence of the two witnesses adduced by appellant was ineffectual to repel their testimony, and that appellant, who had solicited a local investigation, had been called on for a list of neighbouring people whom he wished to have examined, on the 19th February, and had failed to file it, decreed the claim.

Appellant now urges that respondent's witnesses are his relatives, and under the influence of his zemindar, &c.

JUDGMENT.

No complaint was made at the thanna, and this raises suspicion of the truth of the claim. However, respondent's vakeels declare themselves willing to rest their case on the statement of Muddunram Deb, appellant's brother, and Sumbhoonath Poorkayut, his gomashtha, as to whether the extortion averred is true or false, and, looking to the whole circumstances of the case, I think appellant should be required to produce these persons, and the moonsiff directed to examine them.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for enquiry as indicated above. The price of the stamp in the petition of appeal will be refunded, and the moonsiff will pass orders in regard to the remaining costs of appeal.

THE 27TH JUNE 1850.

No. 103 of 1850.

Appeal from the decision of Nuzerooddeen Mahomed, Moonsiff of Parkool, dated 22nd May 1850.

Shanund Ram Deb, Appellant,

versus

Kishenpershad Deb, Respondent.

RESPONDENT sued under a bond.

The bond is admitted, but the inclusion of illegal interest is pleaded.

The moonsiff (Moulvee Nuzerooddeen Mahomed) did not hold the plea advanced by appellant established, and decreed the claim.

Appellant now urges that one of the witnesses, on whose evidence the moonsiff has relied, is a relative, and the other a servant of respondent, while the inclusion of interest in advance is substantiated by the evidence of one of the subscribing witnesses to the bond and the draftsman of it, and fair opportunity was not given for the production of Neel Ram, respondent's brother.

JUDGMENT.

The evidence of the inclusion of illegal interest is discrepant. One of the witnesses testifying to it is appellant's relative and another his priest. Further, appellant was ordered, in February, to lodge tullubana for the apprehension of Neel Ram, and failed to fulfil the order up to the date of the moonsiff's decision. Under these circumstances, holding execution of the bond, for the consideration expressed in it, proved, I see no reason for interference.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be affirmed, and the appeal dismissed, with costs.

THE 28TH JUNE 1850.

No. 99 of 1850.

Appeal from the decision of Baboo Chunderkishnur Rai, Moonsiff of Hingajeeah, dated 18th May 1850.

Sheebanund Surmah and Kaleekapershad Dutt, Appellants,

versus

Tarnee Dibca and others, Respondents.

RESPONDENTS sued for 7 annas, the value of priestly offerings, and to establish their right to act as priests in the house of Kaleekapershad, their hereditary jujman, who had employed Sheebanund Surmah and Kishnanund Surmah to act as priests, in dispossession of them, respondents, on two occasions.

Kishnanund and Sheebanund answered, denying that Kaleekapershad and Biddiapershad are respondents' hereditary jujmans, or that the respondents ever acted as their priests; and asserting that, Kaleekapershad and Biddiapershad are these defendants' hereditary jujmans, as are all the *Duts* in mouzah Gooptaram; and they add that, 9 or 10 years ago, there was a quarrel between them on one side, and Kaleekapershad and Biddiapershad on the other, and that, in consequence, they were never sent for, and never went, to do duty as priests in the house of these jujmans; that duty being performed by other brahmins, but that now, the dispute being settled, these defendants, who all along continued to perform the priestly duties in the houses of the other *Duts* of mouzah Gooptaram, have resumed them in the house of Kaleekapershad, receiving the offerings: and they further state that respondents, in consequence of being at issue with these defendants concerning land, have instituted this suit, suing several respectable people to prevent their giving evidence: moreover, that they were forcibly prevented from performing the duties of priests in the house of Biddiapershad on the occasion of Dusserah Poojah in 1256.

Kaleekapershad Dutt filed an answer in support of the foregoing answer.

The moonsiff (Baboo Chunderkishnur Rai) distrusted the evidence adduced by the defendants, thinking it improbable that Kishnanund and Sheebanund would allow others to act as priests for 9 and 10 years, and, noticing that Biddiapershad, Kaleekapershad's brother, was still in the position of jujman to respondents, and that Sheebanund, on being questioned, was unable to state the occasion, on which the priestly rites were performed by others in superses-

sion of him 9 or 10 years ago, he held it proved that Kaleekapershad is respondent's hereditary jujman, and decreed the claim.

Appellants now urge that, had respondents and their ancestor been hereditary priests of the said jujmans, they would have specified in the plaint, or reply, the ancestor of Kaleekapershad who had appointed the ancestor of respondents, and the latter's name; that there are eight connected houses of these *Duts*, and that, saving in the house of Kaleekapershad and Biddiapershad, respondents have performed the rites of priest in none of them; and that respondents' witnesses, Resheekesh Surmah and Muttooresch Surmah, are respondents' uncles, Ramkishun Surmah, their relative, Jyogobind Deb, the jujman of their cousin Shamanund, and Mahomed Sabir Chokedar, is under their influence, &c.

JUDGMENT.

The evidence of the parties and the probabilities are conflicting. The witnesses on either side are almost all connected with the party which adduced them. The merits seem to admit of elucidation by local enquiry, which I deem absolutely necessary for the establishment of good ground for a final judgment.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for local enquiry into its merits. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass orders in regard to the remaining costs of appeal.

THE 28TH JUNE 1850.

No. 102 of 1850.

Appeal from the decision of Baboo Chunderkishwur Rai, Moonsiff of Hingajeeah, dated 31st May 1850.

Gunneshram Das and others, Appellants,

versus

Doorgachurrun and others, Respondents.

THIS suit must be returned, because the forms prescribed by the law have not been observed. Evidence has not been taken to the service of notice of suit at the house of the widow of Soobede Rai, one of the persons against whom the decree is passed, as is directed by Section 21, Regulation XXIII. 1814.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for further investigation. The stamp on the petition of appeal will be returned, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

THE 29TH JUNE 1850.

No. 97 of 1850

*Appeal from the decision of Moonshee Mahomed Moazum, Moonsiff of
Latoo, dated 16th May 1850.*

Kaleechunder Surmah, Appellant,

versus

Hoolas Ram Pal and others, Respondents.

APPELLANT sued for 4 kars of land and homestead in talooka Sookdeb Bhut, No. 249, averring dispossession from Maugh 1231 B. S.

The moonsiff (Moonshee Mahomed Moazum) dismissed the suit as not brought within time.

Appellant now urges that the deed of his nativity and evidence of his witnesses show that the suit is in time.

JUDGMENT.

The *jumumputra*, or deed of nativity, which has been filed, is dated 1st Maugh 1741, *Shukabda*, corresponding with the 1st Maugh 1226 B. S., and the 13th January 1820; but there is a petition filed in the collector's office from the proprietors of talooka Sookdeb Bhut and other talookas, for the conversion of their payment of the revenue from cowries into rupees, and this petition which bears appellant's name as a proprietor in talooka Sookdeb, and does not appear to me liable to suspicion, is dated 11th Sawun 1226, corresponding with the 25th July 1819, and shows that appellant was in existence before the date of the *jumumputra*, which he has adduced to show that his suit is within time, and that the latter document is a forgery; and as between the date of the said petition showing appellant's existence at that time, and the date of suit, 23rd Bhadoon 1256, or 7th September 1849, after deducting 18 years for the period of minority, upwards of 12 years have elapsed from the date of majority, the suit is clearly not instituted within the time allowed by the law.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 29TH JUNE 1850.

No 98 of 1850.

Appeal from the decision of Baboo Sharodapershad Ghose, Moonsiff of Ajmereegunge, dated 15th May 1850.

Ruhmatoollah, Appellant,

versus

Sheopershad Ghose, Respondent.

RESPONDENT sued to recover under a bond, dated 2nd Aughun 1254.

Appellant resisted the claim, pleading that he can write both Nagree and Bengalee; that comparison of the name on the bond with his writing would disclose the fraud; that he caused the dismissal of respondent, who was surburakar of mouzah Zeapoor, in 1254 B. S.; and that, on this account, respondent, who was not in a condition to lend money, fabricated a bond and preferred this, and at the foot of the answer there is added that he, appellant, was at his own house on the 2nd Aughun 1254.

Respondent filed a petition, alleging that the plea at the foot of the answer had been added by Bishnath Chukurbuttee, after the answer had been filed, in collusion with Deepchunder, a mohurrir.

The moonsiff (Baboo Sharodapershad Ghose) found that appellant's name in his handwriting, on the vakalutnamah filed by him, wore the appearance of having been written by a person who had lately learnt to write, and showed the omission of a letter; and, setting aside the evidence of appellant's witnesses, he held the claim proved by those adduced by respondent, and decreed accordingly.

Appellant now urges his pleas are made out; that the moonsiff has relied on the evidence of two persons who are low fellows, and whose evidence is discrepant, and who have not identified the bond, or stated the date of its execution; and that, if the books of account and other documents be examined, it will be found that appellant never uses the letter said to be omitted in the same; and that he knew how to write before the date of the bond.

JUDGMENT.

This case requires much more enquiry than the moonsiff has bestowed on it. Certain it is, that appellant can write, and enquiry should be made whether he could do so before the date of the bond; whether he caused the dismissal of respondent from his surburakarship, and whether respondent had the means of lending.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for enquiry as indicated above. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will

pass proper orders regarding the remaining costs of appeal, and submit, for this court's perusal, the papers of his enquiry into the alleged addition to the answer after it was filed.

THE 29TH JUNE 1850.

No. 100 of 1850.

Appeal from the decision of Chunderkishwur Rai, Moonsiff of Hingajeeah, dated 16th May 1850.

Brijoo Kishwur Deb and others, Appellants,

versus

Jubba Dasec, widow of Doorgaram Rai, Respondent.

THE late Doorgaram Rai, now represented in this appeal by his widow, sued for 52 rupees, 13 annas, 3 pie, the hire of two cows and a bullock forcibly taken and detained, and for recovery of one of the said cows and its calf, still detained by appellants.

Brijoo Kishwur and Sheopershaud filed an ansyer in total denial of connection with the affair.

Tilukram answered, averring purchase of the animals from Doorgaram; that he had sold one of the cows to another person; that plaintiffs wished him to sell the bullock; but that he would not do so; and that therefore, and because of enmity between the landlords of the parties, plaintiffs had carried off two of the animals, &c.

The moonsiff (Baboo Chunderkishwur Rai) held it proved that respondent's cattle had been forcibly taken and detained, and he passed a decree, reducing the rate of hire, against appellants.

Appellants now urge that Tilukram's purchase is proved; that the amount of hire is not proved; that cows in calf are never used in agriculture; that ploughing continues for six months only in the year; that the amount of hire awarded, compared with the value of the cattle, is enormous, &c.

JUDGMENT.

It is clear, from the papers, that the story about the purchase is false, and that respondent's cattle have been detained forcibly, and it appears to me that he is entitled to hire as compensation for the loss of their services. The rate of hire allowed is less than that to which the witnesses have sworn, and though undoubtedly large, when compared with the value of cattle, is not therefore necessarily untrue, in a district where the interest of money is proportionately high: and I see no reason to alter the award of the moonsiff.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 29TH JUNE 1850.

No. 104 of 1850.

Appeal from the decision of Moulvee Nuzerooddeen Mahomed, Moonsiff of Parkool, dated 22nd May 1850.

Kashecnath Thakoor and others, Appellants,

versus

Musmut, Teerroo and others, Respondents.

RESPONDENT sued for the services of Kashee Thakoor, as his appointed priest, and to compel other persons of his caste, who are sued, to associate with him.

Appellants resisted the claim. Kashee Thakoor denies being respondent's "kulpit prohit," or appointed priest, and having received 3 rupees for the obsequies of Menjer Malee, respondent's relative, as stated by them, and urged that, though he and Rughoo Thakoor officiated at the shrad of Nehal Malee, the father of Menjer Malee, the late husband of one respondent, and father of the others, but finding that Hurree Malee, brother of Menjer, was tainted in caste, he had done penance for his act.

The moonsiff (Moulvee Nuzerooddeen) observed that appellants, though required to adduce such witnesses as they might wish to present, had failed to do so for nine months, and, finding respondents' claim established, he decreed the same, in concurrence with a bewasta from the pundit, against all persons sued, saving Gobind Thakoor.

Appellant now urges that respondents never made the customary presents given on the occasion of persons joining their society; and that, if the inhabitants of seventeen mouzahs comprehended in it would admit respondents, they, appellants, would have no objection.

JUDGMENT.

This dispute has arisen concerning the shrad, or obsequies of Menjer Malee. Respondents' family are averred to be tainted in caste, because they kept up communication with Menjer's brother, Hurree Malee, who had become a Mussulman. Kashee Thakoor admits that he joined in the shrad of Nehal Malee, at which the other persons against whom the decree is passed are proved to have been present, and his defence is, that he acted in ignorance that respondents were tainted in caste, and had since purged away the sin of his act by doing penance for the same. But there is no proof of ignorance furnished, or indeed proof that respondents are in any wise tainted, though appellants were required, nine months before the moonsiff's decree, to produce proof. And, as the bewasta of the pundit of the Dacca circle shows that an appointed prohit, who has acted as priest for tainted persons, as well as persons who have admitted them into their society, are not entitled to treat them as outcasts,

unless they can prove ignorance of taint at the time of communion; and as the case appears to me one which I must decide under Section 15, Regulation IV. 1793, which provides that questions of caste among Hindoos shall be disposed of under the Hindoo law, I see no cause for interference with the moonsiff's decree.

• IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

ZILLAH TIRHOOT.

THE HONORABLE ROBERT FORBES, JUDGE.

THE 14TH JUNE 1850.

No. 34 of 1849.

*Regular Appeal from a decision of Moulvee Mohummud Mohamid, second
Principal Sudder Ameen, dated 20th February 1849.*

Meer Allee and four others, (out of six Defendants,) Appellants,
versus

Baboo Chedee Loll, (Plaintiff,) Respondent.

THIS action was brought by the respondent as plaintiff, to recover from the five defendants (appellants,) heirs of Meer Saadut Allee, and one Geetaram Jha (not present in appeal,) the sum of Company's rupees 4494-5, principal and interest of surplus sale proceeds of mouzah Kunsar, pergunnah Bubbrah, under the following circumstances.

In a case appealed to the Sudder Court by Hossein Buksh and others as defendants *versus* Meer Jaffer Shah, and after him Meer Saadut Allee, the above named Geetaram Jha had stood security for the above defendants to stay execution of decree pending appeal, but his security was rejected; and on the appeal preferred to the Sudder Court being dismissed, the respondent Meer Jaffer Shah, from whom the Government had to receive a sum on account of costs, petitioned the principal sudder ameen before whom the case was pending that, as mouzah Kunsar which Geetaram Jha had pledged as security had been sold for arrears of Government revenue, the surplus sale proceeds in the collectorate might be credited in satisfaction of his (Jaffer Shah's) debt to Government, to which effect an order was passed by the principal sudder ameen and the money accordingly so credited. Geetaram Jha objected, but his objection was overruled, and the order of the principal sudder ameen upheld on appeal to the judge. On appeal, however, to the Sudder, that Court, on the 25th January 1845, ordered the money attached to be released from liability for security, which order was sent for execution to the court of the principal sudder ameen in which the case was pending. Subsequently, the plaintiff in this case purchased the above sale proceeds with interest and costs by kuballa, dated 23rd February 1845, from Geetaram Jha, and on his

petitioning the principal sudder ameen for its refund to him, the petition was rejected on the recorded ground of the execution of decree having been struck off, which order was upheld on appeal both by the zillah judge and Sudder Court. Cheedee Loll, the plaintiff, then again petitioned the Sudder Court, and an order was issued on the 6th July 1847, directing that the plaintiff should be recognized as representative of Geetaram Jha, but that, as the decreeholder had actually received the sale proceeds, an order could not be passed in a miscellaneous case directing its refund.

The defendants pleaded, in answer, that the sale proceeds under litigation were credited to Government in satisfaction of its demand upon Jaffer Shah, and that their ancestor, Saadut Allee, having acquired the property of Jaffer Shah by purchase, the suit against them is futile; that, when the security rejected here was forwarded to the Sudder Court, it was approved in full court as good and sufficient, as proved by their letter No. 938, and their proceeding of the 6th May 1837, and the judge's roobakaree of the 10th June following, agreeably to which the principal sudder ameen attached the sale proceeds, which orders are still in full force and unreversed, while the orders, which the plaintiff cites as his authority for suing, are not sufficient for a regular suit.

The answer of the defendant Geetaram Jha is an admission of his having sold the surplus sale proceeds to the plaintiff.

The principal sudder ameen, finding that the security which led to the sale proceeds being attached had been rejected and rendered null and void by the Sudder Court's order of the 25th January 1845, by which those sale proceeds were released from liability, and that the plaintiff was by the Court's order of the 6th July 1847, recognized as the representative of Geetaram Jha, gave the plaintiff a decree, absolving, however, the latter, and adding that orders of a date anterior to the 25th January 1845 could not avail the defendants in support of their pleas.

The defendants urge, in appeal, that the money was not ordered to be refunded in the Court's proceeding of the 25th January 1845, because it was considered that justice would best be done to both parties in a regular suit. Moreover, that proceeding was for the release of other property and not these sale proceeds; and the proceeding of the principal sudder ameen of the 8th September 1847 which attached them was not appealed against, but is still in full force.

JUDGMENT.

On the first issue for determination in this suit, viz., whether the security of Geetaram Jha was admitted or rejected, I agree in opinion with the principal sudder ameen that the fact of its having been rejected is fully established; first, by the judge's proceeding of the 26th January 1837; and secondly, and still more so, by the

Sudder Court's final order of the 25th January 1845, releasing the property of Geetaram Jha from liability for security, under which circumstances the appellant's claim to the sale proceeds in question, on the ground of the property sold having been pledged as security, falls to the ground.

On the second point for adjudication, of which, probably from no demur being made in his court, the principal sudder ameen did not take notice, viz., what was the rightful share of Geetaram Jha of the sale proceeds under litigation—the fact of his being entitled to exactly the amount for which the plaintiff has sued is established by a copy of a report of the wasilbakee nuvees of the collectorate filed in this court.

Affirming, therefore, the judgment of the principal sudder ameen, I dismiss the appeal, with costs chargeable to the appellants.

THE 17TH JUNE 1850.

No. 39 of 1849.

*Regular Appeal from a decision of Moulvee Mghummud Mohamid,
• • second Principal Sudder Ameen, dated 20th March 1849.*

Mr. Edward Studd, Mooktyar of Messrs. Gisborne and Co.,
(Defendant,) Appellant;

versus

Musst. Beebee Abadance, (Plaintiff,) Respondent.

SUIT to recover Company's rupees 12,100-14-9, estimated value of, and arrears of rent, principal and interest, due on, 36 beegahs 10 cottahs of land, with resumption of the same, situate in mouzah Sadoollapore, pergunnah Ruttec, for 1253 and 1254 F. S., by reversal of a proceeding of the fujidaree court in a case under Act IV. 1840.

This and the two cases which follow, Nos. 37 and 38 of 1850, (although the two latter are numerically first upon the file,) as between the same parties, relating to a similar cause of action, and with similar pleadings, are brought on for hearing together, the judgment recorded in this being applicable to the two appeals which follow.

The plaintiff, who holds a 5 annas 3 pie share, alleges that the other shareholding maliks of the above mouzah and herself, the property being then undivided, had given to Mr. Fitzgerald, proprietor of the Singhia factory, (represented by the original defendant, Mr. W. H. Sterndale, now managed by the appellant as agent for Messrs. Gisborne and Co.,) a thika lease of 200 beegahs of land in the above mouzah, on a yearly jumma of 550 rupees from 1248 to 1252 F. S., the pottah being in the name of moonshee Kumla Dutt, (also sued as a defendant, but absolved by the court of first instance,) and on the expiry of the lease the defendant without

obtaining a fresh document cultivated 111 beegahs of the above quantity. In the beginning of 1254, she (the plaintiff) having effected a division of the land by a butwarah ameen deputed by the collector, out of the 111 beegahs cultivated by the factory, 36 beegahs 10 cottahs were determined by the butwarra to be her proportionate share; notwithstanding this the defendant continued, in 1254, to cultivate the above 111 beegahs, and got an order in an Act IV. case, maintaining himself in possession.

The defendant admits as true what the plaintiff alleges as having taken place up to end of 1252, but pleads that a 4 annas 6 pie share of the mouzahs was leased to the factory, by kutkina given by Sheikh Sultan Allee and Moulvee Ramzan Allee, thikadars, in 1253 F. S., and accordingly the factory continued to cultivate the quantity of land it before had; and agreeably to authority given both by the plaintiffs and other shareholders, he (defendant) has regularly paid in the revenue to the collectorate. The butwarra too to which the plaintiff alludes was declared null and void, and the land remains still undivided. The plaintiff has therefore no right whatever to more than rent, according to the quality of the land and the rate stipulated by the factory, as entered in the original kubooleut and pottah. Moreover, the plaintiff did not answer in the Act IV. case, and Moonshee Kumla Dutt has nothing whatever to do with the merits of the case.

The defendant Kumla Dutt did not defend the action.

The principal sudder ameen, absolving Moonshee Kumla Dutt, decreed this and the two cases which follow in favor of the plaintiff. He argued that the defendant does not deny the amount of the plaintiff's share, while it is clear from the dakhilas filed that she has paid the revenue of her share for 1253 and 1254 F. S. The defendant's therefore paying in the revenue of her share was superfluous, corroborative proof of her having herself paid in her own share being afforded by the copy of a petition she presented and of a kyfeut of the tehsil mohurrir. It is apparent that the butwarra was quashed by the collector's order of the 29th February 1848; but as a butwarra had been actually made during the period for rent of which the action is brought, the defendant's remaining under such circumstances in possession of the plaintiff's share was improper. The butwarra having, however, been quashed by the collector, no division of land founded thereon can hold good, and the plaintiff's seeking to separate 36 beegahs 10 cottahs from 111 beegahs is inadmissible, without instituting a suit for a butwarra. Nevertheless her share, viz., 36 beegahs 10 cottahs, which she holds jointly, ought to be resumed from the defendant's possession, and witnesses have given evidence regarding the rate of the rent of the land. The claim of the plaintiff is therefore established against the chief defendant, and the proceeding in the Act IV. case must be cancelled.

The grounds of appeal are a repetition of the pleas urged in defence, the appellant further contending that, as the butwarra had been quashed, and he (appellant) paid in the revenue to the collector at the request of the plaintiff's own son, which is proved by evidence and dakhilas, the pleas of the plaintiff and the decision of the principal sudder ameen are at variance with the record.

JUDGMENT.

I find, with reference to the point at issue in this and the two cases which follow, viz., the validity or otherwise of the butwarra on which the plaintiff's claim hinges, that the decision of the principal sudder ameen in the court of first instance is at variance with the arguments on which his judgment rests and the reasoning intended to support it.

It is clear from the order of the collector of the 29th February 1848, that the butwarra in question was quashed, and the principal sudder ameen himself, admitting that and quoting the same order, argues that any division of land founded on such a butwarra cannot hold good; notwithstanding which, the principal sudder ameen's decision is in fact a decree for rent for a specific and defined portion of land, which cannot be admitted without a butwarra valid and confirmed.

Nonsuited the plaintiff in each, I reverse the decision of the principal sudder ameen in this and the two following cases, Nos. 37 and 38, with costs chargeable to the respondent.

THE 17TH JUNE 1850.

No. 38 of 1849.

Regular Appeal from a decision of Moulvee Mohummud Mohamid, second Principal Sudder Ameen, dated 20th March 1849.

Mr. E. Studd, Mooktyar of Messrs. Gisborne and Co.,
(Defendant,) Appellant,

versus

Musst. Beebec Abadanee, (Plaintiff,) Respondent.

SUIT to recover Company's rupces 766-9-6, estimated value of, and arrears of rent, principal and interest, due on, 26 beegahs, 10 cottahs of land, with resumption of the same, situate in mouzah Tajpore, pergunnah Ruttee, for 1253 and 1254 F. S.

JUDGMENT.

For grounds of decision, *vide* that recorded in the case No. 39. The plaintiff is nonsuited, and the decision of the principal sudder ameen reversed, with costs chargeable to the respondent.

THE 17TH JUNE 1850.

No. 37 of 1849.

Regular Appeal from a decision of Moulvee Mohummud Mohamid, second Principal Sudder Ameen, dated 20th March 1849.

Mr. E. Studd, Mooktyar of Messrs. Gisborne and Co.,
(Defendant,) Appellant,

versus

Musst. Beebee Abadanec, (Plaintiff,) Respondent.

SUIT to recover Company's rupees 375-4, estimated value of, and arrears of rent, principal and interest, due on, 12 beegahs, 10 cottahs of land, with resumption of the same, situate in mouzah Ibrahim-poor, pergunnah Ruttee, for 1253 and 1254 F. S.

JUDGMENT.

For grounds of decision, *vide* that recorded in the foregoing case No. 39. The plaintiff is nonsuited, and the decision of the principal sudder ameen reversed, with costs chargeable to the respondent.

THE 18TH JUNE 1850.

No. 518 of 1849.

Regular Appeal from a decision of Pundit Dataram, Moonsiff of Teighra, dated 15th February 1849.

Musst. Goonah, wife of Dahoo Raee and three others,
(Defendants,) Appellants,

versus

Chowdry Rampershad and three others, (Plaintiffs,) Respondents.

THE plaintiffs sued in this action as maliks to recover from the defendants the sum of Company's rupees 137-14-3, principal and interest of arrears of rent of 13 beegahs, 18 cottahs, 18 dhoors of land, in mouzah Musnudpore, pergunnah Nyepore, in the latter's cultivation, from 1252 to 1255 F. S., both thika and bhowlee, as per jumna-wasil-bakee account of the putwarree, and after crediting what the defendants had actually paid on the above account.

The answer of two of the defendants, Musst. Goonah and Boondoo Raee, is a denial of their being in arrears. They admit that they have 11 beegahs of land of the plaintiffs in their cultivation agreeably to a "chittee" of Chowdry Rampershad, at a yearly rent of 20 rupees, it being a stipulation in the "chittee," that for whatever land found by measurement in excess of the above quantity they (defendants) were to pay rent at the rate specified; and that a measurement having been made, there turned out to be 1 beegah 3 cottahs more than the quantity above stated. They have all along regularly paid their rent for 12 beegahs and 3 cottahs every year, for which they hold receipts, and, after deducting what they

have paid, there is an actual surplus at their credit of 2 rupees, 8 annas.

The other two defendants denied having any land of the plaintiffs to cultivate.

The moonsiff's decision was a decree in the plaintiff's favor, on proof of the quantity of land by measurement as stated in the plaint, to which fact the putwarree and other ryots gave evidence, the plaintiff having also given the defendants credit for rent actually paid before suing, the claim of the plaintiffs being also established by the testimony of neighbouring cultivators.

Appealing from this decision, the defendants urge that the moonsiff ought to have satisfied himself whether there was really any land in excess of the quantity of 12 beegahs 3 cottahs, according to their (defendants') statement, and they repeat the pleas stated in their defence.

JUDGMENT.

The moonsiff's investigation is, in my opinion, incomplete and insufficient, and the chief issues remain undetermined by his enquiry, especially the exact quantity of land in the defendants' cultivation, which, though contested in the pleadings, has been determined by the moonsiff on a measurement made not since but before the suit was instituted, and the moonsiff ought to have directed a measurement to be made before deciding. Neither does his enquiry settle how much of the defendants' land was nukdee and how much bhowlee. I therefore return the case for re-trial,—with the usual order for the refund of the value of stamp paper.

THE 20TH JUNE 1850.

No. 23 of 1849.

Regular Appeal from a decision of Moulvee Mohummud Mohamid, second Principal Sudder Ameen, dated 14th February 1849.

Syud Shere Allee, (Plaintiff,) Appellant, .

versus

Musst. Boolakun and seven others, (Defendants,) Respondents.

THIS suit was instituted by Syud Shere Allee, who, holding the office of serishtadar to the sub-deputy opium agent of Tirhoot, calls himself the real plaintiff, to recover from Musst. Boolakun, the widow, Sheikh Ameenooddeen, the son, and six other defendants as heirs, of Ameer Allee, the father of one Hidayut Hossein, an opium gomashita, the sum of Company's rupees 1202, principal and interest of a loan alleged to have been made by him (plaintiff) on the 4th October 1837, *furzee*, through one Mhangoo, Sahoo or Baniya, whom the plaintiff calls his servant, in whose name (the plaintiff Shere Allee's not being mentioned therein) the bond is written, and who

is now sued as a defendant in the case. The bond is alleged to have been executed by Ameer Allee on the date specified, and in it payment is promised in five months,—the son of Ameer Allee, the aforesaid Hidayut Hossein, opium gomashita, being surety for the loan, his security for which is inserted in the bond, agreeably to which he pledges any opium commission due to him, and which he may receive before the loan became due, in part payment of the loan itself. The suit includes the widow, 3 sons, and 2 daughters of the late Ameer Allee, and the daughter of Hidayut Hossein, also dead, and the plaintiff's own servant Mhangoo, and was instituted after the lapse of nearly 11 years from the date of the alleged transaction on which it is founded.

The defendant Mhangoo files an answer which, as far as he himself is concerned, amounts to a confession of judgment, and is in support of the plaintiff's claim.

Defendant Shaikh Ameenooddeen, son of Ameer Allee, denies the claim *in toto*, and pleads that neither the widow of Ameer Allee, nor himself, nor his brothers and sisters have succeeded to any property left by the former.

Musst. Wusscehun, the daughter of Hidayut Hossein, denies that her father was surety or gave any security bond, and contends that the security engagement being written on the bond itself is inadmissible with reference to the Circular Order of 27th October 1837. She also pleads that if the transaction had been a *bonâ fide* one, and the commission really pledged, why did not the plaintiff, who was serishtadar, realize the amount from that source? She likewise urges that neither her father, Hidayut Hossein, nor himself succeeded to any property of Ameer Allee's.

The principal sudder ameen dismissed the suit, as he did not consider that the plaintiff's claim was proved, and he found the evidence of the witnesses contradictory; some of them deposing that Ameer Allee was present and executed the bond, others, quite the contrary, that he was not present at all.

It is urged, in appeal, that the defendants did not answer until after proofs had been filed and the evidence of the party who served the notice taken down, and that therefore the principal sudder ameen ought to have satisfied himself, as required by Construction No. 375, that there were sufficient grounds for admitting them to answer at that stage of the proceedings.

The execution of the bond has been clearly proved by witnesses. Besides which, Musst. Boolakun wrote him (appellant) a letter, which he can produce, to say that Meer Baker, her son-in-law, would go to Mozufferpoor, to settle the matter, and he therefore prays that he may be allowed to give in a list of witnesses, and have their evidence recorded.

To this the respondents reply that the fact of the notice not having been served upon them is proved by the record, that the names

of the witnesses, Gunga and Chufkowree, on the bond were written with a different ink from that of the other. Moreover, the appellant ought to have given in the name of Meer Baker Allee, when the usual Section 10 proceeding was held in the court of first instance, and his now doing so is inadmissible. Besides which, the testimony of his (appellant's) witnesses, who deposed in that court, is conflicting.

JUDGMENT.

I find that this suit was not tried in the court of first instance upon what arises as the first issue to be determined.

The plaintiff sues on a bond with security bond executed on the same paper, to which one of the defendants, in her answer, took exception as inadmissible with reference to the Circular Order No. 216 of 27th October 1837, regarding which, however, no order was passed in the court below.

Before entering on the merits of the case, the principal sudder ameen ought to have determined the issue thus raised in bar of the hearing of the suit, passing a proper order thereon with advertence to the Circular Order quoted, to Constructions Nos. 1121 and 1147, and to paragraph 1, of the Circular Order No. 148, of the 9th January 1842. I therefore remand the case to the principal sudder ameen to be accordingly re-tried,—with the issue of the customary order for refunding the value of stamp paper.

THE 22ND JUNE 1850.

• No. 21 of 1849.

Regular Appeal from a decision of Moulee Niamut Allee Khan, first Principal Sudder Ameen, dated 12th February 1849.

Musst. Choonbuttee and three others, (out of seventeen Defendants,)

Appellants,

versus

Bhugwan Dutt Thakoor and four others, (Plaintiffs,) Respondents.

SUIT to be maintained in possession and to effect mutation of registry on a 3 annas 9 pie share of mouzah Bhassur Mutchia, and a 5 annas 6 pie share of mouzah Bhugwanpore Chobey, principal and dependencies, pergunnah Nanpoor, in right of purchase, by reversal of a proceeding of the foudaree court under Act IV. 1840. Action laid at Company's rupees 2065-14-9.

On a sale, in the court of the principal sudder ameen, on the 8th of March 1847, in execution of a decree obtained by Baboo Ruggo-nundun Singh against Lall Dass and twelve others of the defendants, (not present in appeal,) of the above property, it was purchased by one of the plaintiffs, Bhugwan Thakoor, who associated with himself the other plaintiffs as partners, and after the settlement of objections

preferred by the defendant, Musst. Choonbuttee, and other objectors, the plaintiffs were put in possession of the property in dispute. Afterwards, the former proprietors, whose right and interest had been sold, in collusion with Musst. Choonbuttee, brought a case in the foudjdarree court through one Juggun Koormee, servant of Sheogolam Singh, one of the defendants, which was dismissed on the 13th March 1847. Subsequently, Bishun Dutt Mahtoo and others; ryots of mouzah Bhassur Mutchra, petitioned in the foudjdarree court that, though they had paid their rent to the auction purchaser of the share of Lall Dass, the adopted son and heir of Atmaram Dass, the defendant, Sheogolam Singh, nevertheless, demanding rent from them, oppressed them. This led to a case under Act IV., in which Musst. Choonbuttee, the widow of Atmaram Dass, answered that she was in possession as the heir of her deceased husband, the two defendants Sheogolam and Atim Singh, as thikadars from the said Musst.,—the plaintiffs having come forward and filed a petition as third parties in that case. By the order passed, however, in the Act IV. case, on the 1st January 1848, the defendants, Sheogolam and Atim Singh, were maintained in possession.

In support of their claim the plaintiffs allege that Musst. Choonbuttee herself admitted, in the suit of Birjobhookun Thakoor and others, that her husband had adopted the defendant Lall Dass; and they refer to a decision of the additional judge of the 26th July 1845, to rebut the plaintiffs' plea of her being her husband's heir, and to corroborate their (plaintiffs') statement regarding the adoption of Lall Dass.

The answer of the defendant Musst. Choonbuttee is a denial of her having made the alleged admission of Lall Dass's adoption, of which, being a purdah-nusheen, she knows nothing. She pleads that were the adoption true, an attestation of the kurta-puttra would have been filed in some court. She likewise urges that, having sued some ryots for arrears of rent before the moonsiff of Coylee, she obtained a decree on the 5th of June 1844, which was upheld on appeal on the 11th March 1845, also that a butwarra of mouzah Bhassur Mutchra having been made, her (defendant's) name will be found inserted in the terij, and that in the principal sudder ameen's court after the sale, Lall Dass, denying his being the adopted son of Atmaram, pleaded that the share of his own real father had been sold.

The defendant, Sheogolam Singh, answered that his co-defendant, Musst. Choonbuttee, had, as the heir of Atmaram Dass, both sold and farmed to him (defendant) portions of both the mouzahs in question.

The other defendants did not appear or defend the action.

The principal sudder ameen decreed the suit in the plaintiff's favor, on satisfactory proof of the heirship and adoption of Lall Dass, from a "verasutnamah" and "foutinamah," copy of a hibanamah, or deed of gift, executed by Musst. Choonbuttee, and of

the answer of the latter in the suit of Birjobhookun Thakoor, and the decision of the additional judge in that suit as well as copy of a thika pottah written by Lall Dass, and a fysillah of his own (the principal sudder ameen's) court in the case of Baboo Ruggonundun Singh *versus* Byjoo Lall and the aforesaid Lall Dass, as well as the usual documents in proof of sale and possession, and evidence of witnesses to the fact of adoption; and as under these circumstances the right of Musst. Choonbuttee, has not been established, the claim of Sheogolam Singh as purchaser and farmer from her can have no legal foundation.

Appealing from that decision, Musst. Choonbuttee, Sheogolam, and other heirs of Atim Singh, deceased, contend that mutation of registry was effected on the strength of a roobakaree of the civil court without demur on the part of Lall Dass; that the alleged libbelnameh, of which a copy has been filed, is a forgery; and that as, by the Hindoo law, a widow cannot alienate her husband's property, the principal sudder ameen ought to have called for a bewusteh from the pundit. Moreover, in the end of the very decision of the additional judge, which the principal sudder ameen cites in support of the alleged adoption, it is stated that the adoption had not been made conformably to usage.

JUDGMENT.

I concur in opinion with the principal sudder ameen that the point for adjudication in this suit, the fact of the adoption of Lall Dass by Atmaram Dass, the husband of the defendant, Musst. Choonbuttee, has been satisfactorily established by the various documents referred to in the judgment of the lower court, especially the unreversed, and therefore final decision of the additional judge, dated 26th July 1845, in the suit of Birjobhookun Thakoor, the most recent judgment bearing on the point at issue; and as nothing has been established in appeal to impugn the integrity of the decision appealed from, I affirm the same, and dismiss the appeal, with costs payable by the appellants.

THE 26TH JUNE 1850.

No. 36 of 1849.

Regular Appeal from a decision of Moulvee Mohummud Mohamid, second Principal Sudder Ameen, dated the 20th March 1849.

Mr. E. Studd, Mooktyar of Messrs. Gisborne and Co., (Plaintiff),
Appellant,

versus

Musst. Abadanee, Syud Iltaf Allee, and Meer Ihsan Allee,
(Defendants,) Respondents.

SUIT to recover Company's rupees 1244-14, principal and interest, on account of damage to indigo cultivation belonging to the Singhia

factory on 48 beegahs, 2 cottahs, 3 dhoors of land in mouzahs Sadoollapore and Tajpore, pergunnah Ruttee, for 1254 F. S.

This suit was originally instituted in the court of first instance by Mr. W. H. Sterndale,—the factory, however, being now managed by the present appellant.

The substance of the plaint is that the factory of Singhia held a thika lease of 336 beegahs of land in the above two mouzahs from 1248 to 1252 F. S., given by all the shareholding maliks of the property, agreeably to the authority of all of whom he (plaintiff) paid the rent to the collector. A $4\frac{1}{2}$ annas share of one malik, Meer Munowur Allee, which was let in thika farm to Sultan Allee was underlet by kutkina to the factory; and although the period of the thika lease did not extend beyond 1252 F. S., yet on account of the land being undivided and of the share being let in kutkina, indigo was allowed with the consent of the defendants to be cultivated as before. In the beginning of 1254, the plaintiff's son Iltaf Allee, and Ehsan Allee, coming to the factory, assured the plaintiff that they would give him a pottah, and authorized him to pay the revenue into the collectorate; but procrastinating from day to day they all at once collected a body of rioters, and, preventing the cultivation of indigo, forcibly sowed barley in the disputed land. Ultimately there was a case under Act IV., in which his (plaintiff's) possession was upheld.

The defendant Musst. Abadanhee pleads that the plaint contains no specification of the quantity of land in each mouzah, and that, as the period of the lease had expired, and they (defendants) had given no fresh document, the plaintiff's cultivating the land was only his bad faith. Moreover, the plaintiff did not prefer this suit until she (defendant) had brought two actions to recover land of which the plaintiff forcibly kept possession.

The answers of Iltaf Allee and Ehsan Allee are in support of that of the preceding defendant.

The principal sudder ameen dismissed the suit. He observed that the plaintiff was maintained in possession by the proceeding in the Act IV. case, dated 3rd April 1847, which corresponds with 1254 B. S., the plaintiff himself admitting that he was in possession in 1253 F. S.; and were it really the case that the defendant had dispossessed him, the latter would assuredly have brought a case complaining of proceedings in contravention of that Act. This suit too was not instituted until after that of the defendant, which would not have been the case if true; and although plaintiff's witnesses have deposed that it was by the permission of Iltaf Allee, son of Musst. Abadannee, that the plaintiff was allowed to cultivate indigo, mere verbal evidence in the absence of any documentary proof is not sufficient. The copy of the petition, which the Mussamut filed in the collectorate, goes to show that, not liking the plaintiff's paying in the revenue, she paid it in herself.

The plaintiff, in appeal, contends that the principal sudder ameen has dismissed the case, notwithstanding its being proved; and as the defendant does not deny having sown the land with barley, his suit cannot be thrown out on account of being last instituted.

JUDGMENT.

In this case the plaintiff sues to recover damages said to have been done by his opponents to his cultivation of indigo in 48 beegahs, 2 cottahs, 3 dhoores of land, situate in the two mouzahs of Sadoollapore and Tajpore for 1254 F. S., but without specification of the quantity of land in each, neither does the plaint allege the land to be ijmalee and undivided. Exception having been taken to this by the defendants in their answer; the plaintiff, in his replication, pleaded that only one mouzah, viz., Sadoollapore, was mentioned in the plaint, which is, however, opposed to fact, both Sadoollapore and Tajpore being distinctly mentioned therein. No notice was taken of this in the lower court, nor was any supplementary plaint filed to rectify the irregularity, but the case was tried and decided in the lower court on its merits as if none such had existed. I remand the suit to the principal sudder ameen for re-trial,—with the usual order for refunding the value of stamp paper.

ZILLAH TWENTY-FOUR PERGUNNAHS.

PRESENT: H. T. RAIKES, ESQ., JUDGE.

THE 5TH JUNE 1850.

CASE NO. 1 OF 1850.

Appeal from a decision of Roy Hurro Chunder Ghose Bahadoor, Principal Sudder Ameen, passed on the 4th December 1849.

Hurnath Roy Chowdry, (Defendant,) Appellant,

versus

Issur Chunder Paul Chowdry's minor son, Brujonath Paul's guardian,
(Plaintiff,) Respondent.

PLAINTIFF instituted this suit for arrears of rent on account of 1245 B. S., amounting, with interest, to rupees 400, 13 annas, 16 gun-dahs, on a kubooleut executed by defendant.

Defendant admitted having given the kubooleut, but averred dispossession of greater part of the land through the acts of a third party, also payment of 12 rupees 8 annas, for which no credit had been allowed.

The principal sudder ameen decreed to plaintiff the whole amount claimed, observing that, though defendant had tendered proof of the alleged dispossession, it could only give him a right to sue plaintiff for remission and for recovery of the land lost; that such a plea could not release him from arrears, and that his acknowledgment of payment of part showed his liability to pay rent; that the payment, however, of the sum stated was not supported by proofs.

The defendant has appealed, but stated only in his appeal a long story of his having been dispossessed by Mr. Heatly, a Government grantee in the Soonderbuns.

It appears from the kubooleut, filed by plaintiff, and admitted by appellant, that the latter engaged on a lease in perpetuity for some 1800 beegahs of uncultivated lands near the Soonderbuns. The engagement took place in 1241 B. S., and by it appellant agreed to pay 25 rupees rent for the first two years, 247 rupees 8 annas annually for the next six years, 297 rupees 8 annas for the following year, 462 rupees, 13 annas, 10 pie for the next, and rupees 844, 3 annas, 10 pie, the full jumma, ever afterwards. He received possession of the land within certain defined boundaries, and for two years

held it. In 1244 B. S., Mr. Heatly was put into possession, appellant states, of about two-thirds of the land, and appellant has refused in consequence to pay the stipulated rent for 1245 B. S. to plaintiff.

The principal sudder ameen considers that, even under the circumstances stated by appellant, he is not absolved from his engagement to plaintiff, and I agree with him as to appellant's liability. The engagement between plaintiff and defendant cannot be disturbed by the acts of a third party, and appellant must seek his own remedy before he can be considered to have released himself from this engagement. At present he keeps possession of part of the lands, that which is not disputed, but excuses himself from paying rent for *any* portion, because he has been ousted by a third party from the remainder. I therefore confirm the decree, and dismiss this appeal.

THE 5TH JUNE 1850.

Case No. 3 of 1850.

Appeal from a decision of Syud Oosman Ally Khan, Additional Principal Sudder Ameen, passed on the 10th December 1849.

Ramdhone Roy Chowdry, (Plaintiff,) Appellant,

versus

Nilmonce Ghosal and Gobind Chunder Mookerjee, (Defendants,) Respondents.

SUIT laid at rupees 1229-14-11, for possession of a talook.

The plaintiff states that the property in dispute was leased in farm by his late father to Nilmonce for a period of three years. At the expiry of the lease, Nilmonce wished him to renew it, but as defendant did not give in his accounts, or pay the arrears due, plaintiff refused to renew, on which Nilmonce alleged a pretended sale of the property to Gobind Chunder and kept possession.

Gobind Chunder defendant alleged, in reply, that he purchased the talook from plaintiff in 1242, and paid him 1451 rupees for it, and received possession, that he subsequently renewed the lease of Nilmonce for three years, and, on expiry of it, retained the talook in his own management, and has punctually paid the revenue to the collector.

The additional principal sudder ameen dismissed plaintiff's claim, but has omitted to state in his decree either the points for decision or the reasons thereof, as directed by Act XII. 1843. I therefore remand the case that these omissions may be supplied in the presence of the parties. The stamp fees to be returned.

THE 7TH JUNE 1850.

No. 1 of 1850.

Original Suit.

Mr. J. T. Emmer, (Plaintiff,)

versus

Mrs. Maria Alexander and Miss Magdalene Alexander, (Defendants.)

THE plaintiff states, in his plaint, that, having made a proposal of marriage to Miss Magdalene Alexander, it was accepted on her part by Mrs. Alexander, her mother, in a letter to him, dated 1st of May; that plaintiff then visited at the house as the future husband of the daughter, and a deed of marriage settlement was prepared; that during these preliminaries, the defendants, according to custom in such cases, received from plaintiff various articles, consisting of jewellery, millinery, confectionery, &c., and some pieces of furniture (as per schedule annexed to plaint,) and on the 8th May 1849, three bank notes of 750 rupees, the aggregate value of all amounting to 2,999-8; that, after receiving these valuable articles, the defendants, with the evil design of breaking off the engagement, fomented disputes and differences, and raised a pretext for charging him with an assault in the foudaree court, and caused a fine to be imposed upon him; and as his marriage with Miss Alexander has never been solemnised as stipulated, he claims restitution of the cash and value of the articles received by them.

The defendants stated, in reply, that the plaintiff proposed for, and was accepted by, the younger defendant, with the consent of her mother; that he agreed to settle upon Miss Alexander 20,000 rupees, but the mother, discovering that the terms of the settlement were not those which had been intimated to her, required them to be altered, when the plaintiff refused to sign it, and proceeded to acts of violence, for which he was punished in the foudaree court, and recognizances taken from him to keep the peace; that, during the time of their engagement, the plaintiff had made presents to the daughter of some jewellery and millinery, and to the mother of an iron chest and some gold ornaments; but these were all defendants received, and plaintiff had bestowed them as gifts, unasked for, and unconditionally, and in the hopes of ingratiating himself in their favor; that for such gifts or their value, no action could be maintained whether the marriage took place or not.

Plaintiff, in his replication, denies having given these articles as gifts, and avers that they were to be returned to him in the event of the marriage not taking place.

The defendants rejoined to the same purport as in their answer.

The plaintiff's witnesses were heard at the previous sittings of the court, and the case postponed for the attendance of one of them, Petumber Nag, upon whom a subpoena had been served, but who

had hitherto failed to attend. The plaintiff again this day requested a further postponement to enable him to bring up this witness, but the court, understanding that his evidence was only tendered to prove the delivery of an almirah and table to the defendants, and payment of the price by plaintiff, this court did not consider his evidence material, or of any advantage to plaintiff, he (plaintiff) having failed in other respects to meet the pleas set-up by the defendants.

JUDGMENT.

Under the issues* declared by the principal sudder ameen, I considered the following were the points for decision—whether the articles, whose value is claimed, were to be considered and treated simply as *gifts*, or whether they were received by the defendants on some condition or understanding that, in the event of the projected marriage being broken off, they were to be returned to plaintiff.

* The cause was instituted in the court of the principal sudder ameen, and removed to this court at the request of the defendants.

Plaintiff has put in no direct evidence of any promise or condition to support the latter proposition, but brought forward some witnesses whose depositions were intended to show that the defendant, Miss Alexander, sent and *asked for* certain articles of jewellery and millinery, and received them and bank notes from plaintiff, all which, the witnesses understood, would be returned, if the marriage did not take place. One of these witnesses says, she was at the time the ayah of Miss Alexander, and the others represent themselves as in the service of plaintiff. But their evidence on the point referred to cannot carry much weight with it. For, looking at their position of life, I cannot believe that any communication of this kind was ever made to them, nor is it probable that such a matter would be discussed in their presence, in their language, or in any other way intended to attract their attention. I therefore have no hesitation in rejecting their evidence. It only remains for me to draw my conclusions as to the real nature of this transaction from the facts admitted by both parties. These are, that plaintiff became engaged to one of the defendants on the 1st of May 1849, and that their intended marriage was broken off on the 19th of the same month, in consequence of some dispute regarding the settlement; that during the interval of the engagement, defendants received from plaintiff several articles of jewellery and millinery, which they regarded as *gifts*, but which plaintiff now alleges should be returned to him or their value allowed him, because of the non-fulfilment of the engagement.

From the circumstances attending the giving and receiving of these articles, that is to say, the position of the parties to each other at that time, the reputed wealth of the plaintiff, and the narrow circumstances of the defendants, and the articles given, I can only

consider them to have been parted with as *gifts*, and that, as such, they are not resumable at the will of the donor. I entertain no doubt that, when plaintiff presented these gifts to the defendants, he fully expected to marry the daughter, but it does not alter their nature as *gifts*, because at that time plaintiff gave them with a *specific expectation*, neither can plaintiff, having relinquished all property in them, recover or resume them because that expectation has not been realized.

I discard altogether the allegation advanced in plaintiff's pleadings that the defendants purposely led him into a quarrel in order the better to break off the marriage and retain the presents. The shortness of the engagement proves that no such premeditated deceit could have influenced them, and the acts of plaintiff himself show that his own violence afforded sufficient grounds for the rupture. I therefore, for the reasons above given, do not consider plaintiff has any grounds for maintaining this action, and dismiss it, and direct that he pay the costs of the defendants.

THE 10TH JUNE 1850. ,

Case No. 111 of 1850. ,

*Appeal from a decision of Beneemadhub Shome, Mopisiff of Pauterghottah,
passed on the 12th of March 1850. ,*

Sonatun Goho, decrecholder, Appellant, (Khodabux, Defendant,) ,
versus

Prem Chand Sheikh, (Plaintiff,) Respondent.

THE plaintiff states that the defendant Khodabux, a coachman, having to settle some debts with him, executed a kuballa, or bill of sale, in his favor, of three horses, valued at 97 rupees, on the 16th of August 1848. That the other defendant, Sonatun Goho, having procured a collusive decree against Khodabux by getting him to confess judgment, attached the three horses in satisfaction, and notwithstanding plaintiff's opposition in court, Sonatun Goho carried them away. He therefore claimed their restoration and the value of their hire, estimating his suit at 273 rupees, 4 annas, 13 gundahs, 2 cowrees.

Sonatun Goho alleged the integrity of his proceedings and denied the sale of the horses to plaintiff by his debtor. He stated that with the consent of Khodabux, after the attachment was made, the horses were sold by private sale to liquidate his decree.

Khodabux filed a reply in support of plaintiff's statement.

The moonsiff considered the kuballa filed by plaintiff was established by the evidence of the subscribing witnesses, and the sale proved by the admission of the defendant Khodabux. He then assessed the value of the hire of the horses, and gave plaintiff a decree for 250-4-15-2.

Against this decision, the defendant, Sonatun Goho, has appealed, reiterating his pleas as made before the lower court.

The facts of this case, as they appear in the record, are these. On the 16th of August 1848, the appellant sued Khodabux, the co-defendant in the moonsiff's court, for the amount of a bond, to which Khodabux confessed judgment on the 10th; on the 21st of August, the suit was decreed; and on the 29th idem, attachment taken out against the horses then in the stables of a person named Kadyr Sheikh. Nothing further occurred till the beginning of January, when Sonatun Goho appellant, in the presence of several witnesses, took two of the horses himself at 60 rupees, and sold the third with the consent of Khodabux, and on the 9th of January, filed a razeenamah in satisfaction of his decree. Six days previous to this, that is to say, on the 3rd of January, the plaintiff, Prem Chand, filed a petition, objecting to the attachment of these horses, and pleading his bill of sale; but on the razeenamah being filed, the case was closed, and no enquiry made into the cause of his objections. In the present case it is clearly shown by plaintiff's own witnesses that he lives close to Kadyr Sheikh's where the horses were; that his witnesses were aware of the attachment and told him, yet he took no steps during three months either to make his claim known or to remove the attachment. This can only be accounted for by presuming that no real sale had taken place at the time mentioned in his favor, and the admission of the defendant Khodabux on this point is worth nothing, for if it be true, it would convict him of the duplicity of having sold his horses on the 16th August 1848 to plaintiff, on which date Sonatun filed his plaint against him, and to which he confessed judgment on the 19th, clearly with the view of securing a decree for that person, and allowing him to seize the horses. I therefore see no reason for allowing his admission to assist plaintiff against appellant, and as plaintiff never brought forward his objection at the time of the attachment, I consider the facts prove these horses to have been in the possession of Khodabux, and amenable to appellant's decree, and therefore reverse the moonsiff's decision, and declare plaintiff answerable for the costs of Sonatun Goho alone in the lower court and in this, plaintiff having been represented here without issue of notice.

THE 12TH JUNE 1850.

Case No. 4 of 1850.

Appeal from a decision of Syud Oosman Ally, Additional Principal Sudder Ameen, passed on the 11th of December 1849.

Seebanee Mookhopadhyanee, (Defendant,) Appellant,

versus

Grees Chunder Mookjeea, (Plaintiff,) Respondent.

THE plaintiff in this case sued for possession of 6 beegahs of lakhiraj land, stating that defendant had agreed to sell the same to

his father, and executed a "byna-putro," or engagement, to that effect, on the 10th of Chyite 1253 B. S., corresponding with the 22nd March 1847, receiving at the same time 25 rupees earnest money from his father. The terms of the "byna-putro" were to be fulfilled in five days, by defendant causing the land to be measured, and receiving the price at the rate of 70 rupees per beegah; but although his father offered the balance of the consideration money at the stipulated time, defendant failed to complete the sale. Plaintiff's father having died in the month of Bhadro following, he instituted this suit for possession of the land, and prayed that the sum of 359 rupees might be received from him as balance of purchase money.

Defendant denied the truth of this statement and the execution of the contract. She averred that plaintiff had also underrated his claim, as the land sued for exceeded 6 beegahs, and that the suit was instituted in enmity and with the intention of getting her property at a price less than its value: She likewise urged that her circumstances were not such as would compel her to part with the land.

In the first place, the additional principal sudder ameen deputed an ameen to measure the land claimed, and his report showed that it comprised 8 beegahs and 11 cottahs. An amended plaint was therefore filed, and admitted by the lower court, to make up the additional amount of stamp fees required by law.

The additional principal sudder ameen states, in his decision, that the execution of the "byna-putro" and receipt of the earnest money by the defendant are proved by the evidence of the subscribing witnesses of the deed that as the deed itself neither defined nor specified the quantity of land agreed to be sold, an ameen was deputed to measure it, whose enquiries showed that the land comprised 8 beegahs and 11 cottahs; that defendant had been unable to establish the allegation advanced by her; that the suit had originated in malice, nor could her assertion of inadequacy of price be any bar to the sale. The additional principal sudder ameen considered the evidence as above to preponderate in plaintiff's favor, and therefore gave him a decree for the land.

The defendant appealed against this decision, urging that the lower court had no right to receive the amended plaint after the ameen's enquiry had shown that the value of the land had been underrated in the first instance. The appellant also pleaded generally against the decision, urging the pleas formerly advanced in the lower court.

With reference to the first objection, I see no reason to find fault with the proceedings of the lower court; that court being competent under Section 7, Regulation XXVI. 1814 to receive a duplicate plaint to rectify an error regarding value of stamp at any time during the trial of the cause, if such error did not appear to have

arisen from any fraudulent motive. But I do not agree in opinion with the lower court on the merits of the case.

The suit is brought by plaintiff to compel the specific performance of an alleged contract between plaintiff's father and defendant, to sell to the former the land in dispute. The terms of the deed are that defendant, having engaged to sell to plaintiff's father all her lakhiraj land in mouzah Gante, excepting the site of her dwelling house, a tank, and the jote of Muddun Dey, had received 25 rupees as earnest money, and engaged to have the land measured, and in five days from that date to complete the sale at the price of 70 rupees per beegah. Plaintiff, moreover, avers in his plaint, that his father went at the time appointed, and offered defendant the stipulated price, but she refused to fulfil the contract.

The witnesses brought forward by plaintiff were two of the subscribing witnesses of the deed, and two who were present at the time of its execution. Their evidence merely refers to that one fact, and on it the additional principal sudder ameen decreed possession of the land.

There appears to me to be so many circumstances opposed to the truth of plaintiff's claim, and which I cannot reconcile with the fact of defendant having ever entered into this engagement, that I cannot accord any belief to the depositions of these witnesses. It is asserted that plaintiff's father is the principal who entered into this contract and wished to buy the land, and who took the money at the expiration of the five days, when defendant refused to receive it or to fulfil her part of the arrangement. Notwithstanding the father lived for six months after this, he never moved further in the matter, and plaintiff, his son, procured a stamp to be affixed to the "byna-putro," and four months after his father's death commenced this action. No reason is given for defendant's wishing to sell the property, nor any cause assigned for her refusing to complete the engagement five days after the contract, nor has she to this day disposed of it. The circumstances lead me to doubt the reality of plaintiff's claim, but even if true, I should not consider him entitled to a decree, unless he had proved that his father really made a tender of the price as stated at the stipulated time, and that such tender had been refused by defendant. No evidence of this was brought forward, though the matter is recorded in the Section 10 roobakaree as one incumbent on the plaintiff to establish.

As I consider the plaintiff's case is not satisfactorily proved, I reverse the decision of the lower court, and decree this appeal. Defendant will be reimbursed her expenses in both courts.

THE 18TH JUNE 1850.

Case No. 5 of 1850.

Appeal from a decision of Roy Hurro Chunder Ghose, Principal Sudder Ameen, passed on the 20th December 1849.

Teetooram Halday and Prænkisten Halday, (Plaintiffs,) Appellants,

versus

Brojjonath Mookerjee, Rakhaldooss Halday, Kumlakaunth Halday, Bhuggobuttee Churn Halday, Lokenath Halday, Anund Chunder Halday, and Hurreemohun Halday, (Defendants,) Respondents.

THE plaintiffs claim possession of 4 annas share of a farm, which they aver, was procured by them and the Halday defendants from the collector in the name of the defendant, Brojjonath Mookerjee, their gomashita, who has now, in collusion with the other defendants, unjustly dispossessed them, and perfidiously betrayed their confidence. They state that the farm in question comprises 11 beegahs 16 cottahs of land situated in Dhee Punchawongong, the resumed property of one Huzooree Mulla, and was leased out for ten years by the collector to Brojjonath, and the other defendants holding it "benamee" through him, and depositing as his security a Government promissory note for 1000 rupees purchased by them; that a receipt for this and a farming lease were delivered to them by Mr. Crow, the deputy collector; that Brojjonath, moreover, executed an agreement in their favor, which was duly registered, and he, as gomashita on their part, then continued to collect the rents and paid plaintiffs their respective shares, but enmity having broken out between them and their relations, the defendants, the latter had bought over Brojjonath to their interest and deprived them of their shares.

The defendant denied that he was the "benamee" holder of the farm, or that he had executed any agreement in favor of the plaintiffs. He asserts that the farm is his, that possession was given to him, and that the promissory note is his own, and was deposited by him. That the plaintiff Teetooram wished to take an under lease of the farm, and, on this pretence, had got from him the original pottah, and refused to return it, which fact he had, at the time, made known by petitioning the magistrate to enforce its restoration.

The defendants, Kumal and Rakhal, said they had nothing to do with the farm and no interest in it.

The other defendants filed no replies.

The principal sudder ameen did not believe the witnesses who deposed to the execution of the ikrarnamah, said to have been executed by Brojjonath in acknowledgment of plaintiff's rights, neither did he consider there were any grounds for believing that Brojjonath had acted as plaintiffs' gomashita, no engagement of this nature having been formally entered into; and the principal sudder ameen considered the possession of the pottah proved nothing for

plaintiffs, as they failed to prove how that possession was acquired. On the other hand, Brojjonath had proved his possession of the farm, and held a receipt from the collector of the security deposited by him, the lease, &c., being drawn up in his name, and those defendants who replied had denied all share or interest in the property, while those who were stated to hold shares had not even come forward to protect them. The principal sudder ameen therefore dismissed the plaintiffs' claim.

From this decision, the plaintiffs appeal, urging the pleas set forth by them in the lower court, and laying great stress on their being in possession of the pottah, and of a receipt or acknowledgment from the deputy collector, Mr. Crow, for the Company's paper deposited as security.

I am decidedly of opinion that plaintiffs have failed to afford legal proof of their having taken this farm "benamee" through Brojjonath. They seek to establish the fact by an ikrarnamah, and by the presumption in their favor from the pottah and a receipt for the security deposited being in their hands. I consider the ikrarnamah is no genuine document. It is dated 8th of Joiste 1253 B. S., (20th May 1846), and registered on the 31st December 1846. The mooktyar, who applied for the registry of the deed, presented powers of attorney from *both* parties, that is to say, on the part of the plaintiffs and Brojjonath. It is needless to say that Brojjonath altogether repudiates his acts, and denies all knowledge of the matter. It also appears that this mooktyar was in the service of Peary Mundul, the party to whom plaintiffs gave an under-farm of the 4 annas they claim, and whose attempts to get possession on that plea seem to have been the first steps taken by the plaintiffs to assert their alleged rights. The possession of the pottah and receipt must be regarded with suspicion, for even if not given in the first instance to Brojjonath, it is quite unaccountable why they should have been left in the exclusive possession of plaintiffs, who, on their own showing, have only the limited interest each of 2 annas shares, and could not be entitled on this ground to hold the lease thereof. I therefore agree with the principal sudder ameen in the propriety of dismissing the plaintiffs' claim, as it appears to me they have made out no case at all of a "benamee" title to the 4 annas share of the farm. This appeal is therefore dismissed.

THE 18TH JUNE 1850.

Case No. 7 of 1850.

Appeal from a decision of Roy Hurro Chunder Ghose, Principal Sudder Ameen, passed on the 28th of December 1849.

Ramdoolol Coondoo, Beer Chand Coondoo, and Canyeloll Coondoo,
(Defendants,) Appellants,
versus

Murrogobind Paul, (Plaintiff,) Respondent.

THIS case was formerly up in appeal on the 31st of August 1849, and remanded to the lower court, (see Zillah Decisions for August 1849,) that the evidence of a material witness might be taken. That person having failed to attend, the principal sudder ameen issued proclamation, and then fined him, and decreed the case in favor of plaintiff.

The circumstances of the plaint are these: the plaintiff having sued the defendants for the amount of a bond, they replied that the bond was not for consideration given; but defendants having to settle a decree with one Juggessur, they had paid him cash, and made over to him a quantity of ornaments on the understanding that they were to be sold and the debt satisfied, and this bond was also taken from them in the benamee of the plaintiff, but on condition that it should be returned in the event of the ornaments bringing an amount equivalent to the debt due by them.

The principal sudder ameen stated in his decree that the execution of the bond was satisfactorily proved, and that, though two witnesses gave evidence in support of defendants' allegations, yet, as one was their gomashta and the other their relation, he placed no reliance on their evidence, and as they failed to produce Juggessur, their defence fell to the ground.

I quite concur in the view taken by the principal sudder ameen. The bond is for money lent, and the books of the plaintiff afford proof of the money having been so appropriated. It is not probable that defendants would have executed such an instrument, if intended, as they assert, merely to guard Juggessur from possible loss in the sale of the ornaments. I believe their pleas in avoidance of the claim are perfectly false and without any foundation, and I therefore confirm the decree of the lower court, and appellants will also pay the expenses of respondent in this appeal.

THE 26TH JUNE 1850.

Case No. 6 of 1850.

Appeal from a decision of Roy Hurro Chunder Ghose Bahadoor, Principal Sudder Ameen, passed on the 24th of December 1849.

Brujjo Rajkissoree Passeur, (Plaintiff,) Appellant,

versus

Doorga Churn Bune, Ram Churn Mitter, and Poorna Chunder Mitter, (Defendants,) Respondents.

PLAINTIFF states that, on the demise of her husband, his landed property was placed in charge of the receiver, and a certain talook let in farm by her manager to Bhuggoban Chunder Mitter. This talook having fallen into arrears, the receiver, to save it from sale, offered to let it in farm to any one who would pay up the balance, amounting to 4345-8. The defendant, Doorga Churn Bune, having agreed to take it, the plaintiff lent him the sum of 4345, 8 annas, to pay up the arrears, which he accordingly did, and received a receipt from the collector. She also deposited from her estate 4000 rupees of Company's paper in addition to 2000 rupees of Company's paper pledged by Doorga Churn as his security, the whole of which was lodged with the receiver in Doorga Churn's name, he giving a chit-tee in the names of her step brothers, the other defendants, to enable them to draw the interest and receive the principal when the lease expired. But the farmer failed to pay the rents punctually, and this money was never recovered, for which plaintiff intends hereafter to bring her action. The present suit is for the recovery of the amount of a bond, dated the 13th Bysakh 1247 B. S., which defendant, Doorga Churn, executed in the name of her step brothers, the other defendants, on account of the 4345 rupees, 8 annas, first advanced by her, the remainder of that debt having been liquidated by crediting to this account the 2000 rupees of Company's paper pledged by Doorga Churn, and a payment of the rest by cash and hand note.

The Mitter defendants filed a reply in support of plaintiff's claim, acknowledging that the money had been advanced by her.

The defendant, Doorga Churn, disputed the right of plaintiff to bring the action at all, as the bond was in the name of other parties, to whom alone he had been accountable, and then pleaded payments in full as a set-off against the debt.

The plaintiff, in her replication, admitted certain payments had been made by Doorga Churn, and that the amount might be equivalent; but that they had been made on other accounts, and could not be set-off against the debt, which was altogether distinct and still remained unsettled.

The principal sudder ameen decided that plaintiff had established her right to sue on the bond, on proof afforded by her that the money had really been advanced by her. He then remarks that

both parties admit that the money was lent, and that all the parties were interested in it as connected with the farm taken by the defendant Doorga Churn, that consequently, if it could be shown by Doorga Churn that he had made any remittances on account of this farm, such should be credited in liquidation of this demand which had arisen out of this transaction. The principal sudder ameen then proceeds to shew that the admissions of plaintiff go to show that several payments had been made by the defendants, and that plaintiff and her step brothers, the other defendants, who were mixed up in this transaction, were, time after time, called upon to file their khatta books, but neglected to do so. Under these circumstances the principal sudder ameen took what proof the defendant Doorga Churn had to produce in his favor, and, finding that the payments made by him exceeded the demand of plaintiff, deemed it fair and just to consider them as a set off against this action, and dismissed the claim.

The plaintiff appeals against this, averring that the payments made by the defendants, were on other and separate accounts, and that the bond could not be regarded as in any way connected with the farm, any payments on that score forming altogether a different account.

It appears to me that the accounts between these parties have reference more or less to the lease taken by Doorga Churn. Out of that transaction sprung the bond, the present cause of action. Since that bond was executed, several payments of cash have been made by Doorga Churn, which are pleaded by him as a set-off against this debt. Plaintiff has admitted those payments, but averred that they were payments on a different account. As it is the practice of our courts to set off one debt against another, plaintiff was called upon by the lower court to show cause why these payments should not be so credited in defendants' favor. She neglected to file her accounts or to afford any satisfactory explanation on the point, and the lower court therefore dismissed her claim. I see no reason to interfere with this decision, which, under the circumstances, appears to me a just and fair judgment, and I therefore dismiss this appeal.

THE 28TH JUNE 1850.

Case No. 8 of 1850.

Appeal from a decision of Roy Hurro Chunder Ghose Bahadoor, Principal Sudder Ameen, passed on the 22nd of December 1849.

Sumboo Chunder Chatterjee, (Plaintiff,) Appellant,

versus

Petumber and Degumber Sreemalee, and Taramonee, widow of Nilumber Sreemalee, (Defendants,) Respondents.

SUIT for the recovery of rupees 2986, annas 5, pie 6, cowrees 2, krants 2, principal and interest of a debt on bond.

The plaint sets forth that Jugomohun Sreemalee, the father of the male defendant, borrowed from plaintiff the sum of 2000 rupees, and executed a bond for the amount on the 9th of Bysakh 1245 B. S., pledging also, as collateral security for the repayment of the loan, 13 beegahs of burmētūr land, with his dwelling house, tank, and orchard. Several sums were paid on account, but the balance now sued for remain^{ing} unadjusted, and this suit is brought for its realization.

The defendants, Petumber and Degumber, deny *this in toto*, and state that the suit has been got up by the defendant Taramonee and her brother for the following reasons. Taramonee is the widow of their brother Nilumber, and, on his death, tried to secure possession of his share in their ancestral property, and obliged them to bring an action against her, which terminated in a decision adverse to her keeping exclusive possession of the property, declaring her entitled only to a life interest in her husband's share. This decree was followed by a sale of her interests in the land, &c., to reimburse them for their costs, which they purchased. In revenge for this, and in collusion with plaintiff, she has instigated this action to deprive them of the property.

The defendant Taramonee filed a reply, stating that she had heard of her father-in-law having borrowed the money from plaintiff, and generally supporting his plaint.

The principal sudder ameen first remarks upon the length of time which has elapsed since Jugomohun's death before bringing this suit into court, which he regards as a suspicious circumstance; that the defendants argue that, if plaintiff had this claim on the property as collateral security for his debt, it is remarkable that he never advanced it when the share of Nilumber was exposed for sale in satisfaction of defendant's decree against Taramonee; and that plaintiff has omitted to meet this plea with any explanation in his replication: that the bond filed by plaintiff has been partly burnt in order to give it the appearance of an old document; and finally that plaintiff failed to produce his witnesses, though several times called upon to do so, during a period of seven months; that of the two brought forward, (whose examinations were not closed,) on one of them being challenged by the defendants as not the party he was representing, the witness never again presented himself, and, notwithstanding the orders of the court often repeated to plaintiff's vakeel to procure his attendance, he was never produced, and the vakeel informed the court that his client refused to take any steps to bring forward any more witnesses. The principal sudder ameen adverts then to the reply of Taramonee showing her intention to be to confess judgment, and, comparing this with the statement made by the other defendants and the evidence of their witnesses, concludes that the whole case has been got up with her consent and collusion, and that there is no particle of truth in the plaintiff's claim. On these grounds, the suit is dismissed.

The plaintiff appeals against this decision, urging that he knew nothing of the action between the defendants or of the sale of Taramonee's share in the property, and could not therefore oppose their proceedings; that the two witnesses brought by him, were present some days in the lower court, and their examinations commenced, that the defendants neglected to cross-examine them during this time, and appellant falling sick, he was unable to attend, and the witnesses withdrew; that this was all the neglect he was guilty of, and if the defendants filed false representations against his witness, while he was absent, he could not be blamed on that account.

I consider these excuses of appellant are unsatisfactory. It is evident from the record that plaintiff took no measures to procure the attendance of his witnesses during the time alluded to by the principal sudder ameen, and that when one of them was challenged as attempting to represent another party, the plaintiff (appellant) never again brought him forward, though his examination was not closed and his presence was repeatedly ordered by the presiding judge. The whole case of plaintiff looks suspicious, and only one interpretation can be put upon his backwardness to produce his witnesses, namely, that his case had altogether broken down. I see no reason to interfere with the decision of the lower court, and therefore dismiss this appeal.

THE 28TH JUNE 1850.

Case No. 115 of 1850.

Appeal from a decision of Mr. Wright, Sudder Moonsiff, passed on the 16th of March 1850.

Kallee Chunder Halder, (Plaintiff,) Appellant,

versus

Brojomonee Dibeea, (Defendant,) Respondent.

THE plaintiff pleaded that the disputed land (which was proved to be his by a decree of the additional principal sudder ameen, dated the 7th of May 1845,) was forcibly taken possession of by Ram Chunder on the 28th of Jyete 1252 B. S., by dispossessing his servant Sumbhoo, who went to plough the land.

The defendant, who is Ram Chunder's heir, denies having possession of the land, and alleges that this action for dispossessing plaintiff has been brought from feelings of enmity.

The moonsiff decides that there is no doubt the land in dispute is part of the property decreed to plaintiff in 1845, but states that plaintiff failed to prove any act of dispossession on the part of defendant, or that defendant was now in possession of the land; he therefore dismissed plaintiff's claim, with costs.

Plaintiff appeals against this dismissal, and urges that his witnesses did prove that the land was now held by the defendant.

In this case, plaintiff claims possession of 7 beēgahs of which he was dispossessed by defendant's ancestor in 1252 B. S.

Defendant denies having possession of the land, and the witnesses prove that Ramchand died three years ago.

As the defendant did not deny the matter claimed by plaintiff, no issue could be extracted from the pleadings, and the moonsiff therefore looks at the evidence adduced for proof of dispossession, and records his reasons for not believing the evidence of plaintiff's witnesses on this point, as their statements are opposed to probability. On the point of present possession by defendant, the moonsiff states his opinion to be that the witnesses did not establish the fact of either party's possession in person, or that the parties actually occupying the land were the dependents of the defendant.

In this view I concur, and therefore do not see reason to interfere with the moonsiff's order.
